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COMMERCIAL LAW

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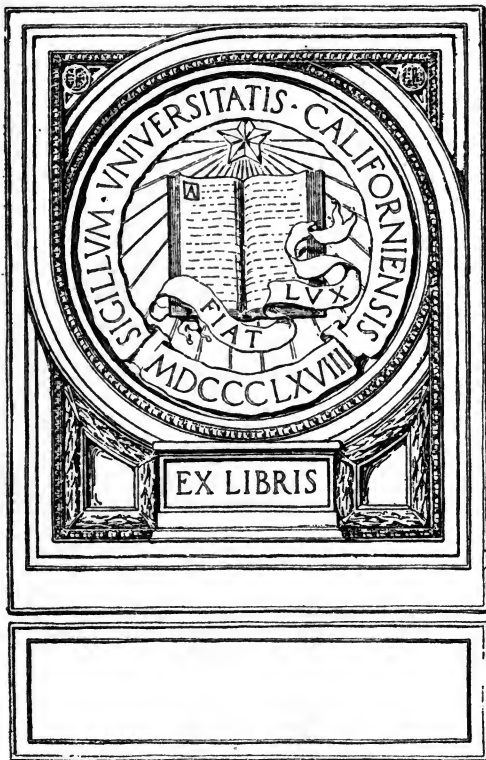
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COMMERCIAL LAW

BY

FREDERICK S. TIPSON, C. P. A.,

*Fellow of the American Association
of Public Accountants*

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Preface.

This volume contains all questions set in the Commercial Law paper at the New York State semi-annual examinations for certified public accountants, from December 1896 (the date of the first examination held), to June 1902, with full answers and explanations in plain, and, as far as possible, non-technical language. It will be noticed that many answers given here are quite different to those which would have been correct at the time the earlier papers were set; this applies particularly to the Corporation Law and the United States Bankruptcy Law of 1898; the numerous modifications of the former in New York State, and the enactment of the latter having effected basic alterations of great import.

It would really seem now as though the old legal motto, "*Stare decisis et non quieta movere*" (To stand by decisions and not to disturb what has been settled) had been allowed to a considerable extent to fall into desuetude, so numerous are the apparently conflicting legal decisions rendered from day to day. The consequences have not been particularly happy.

It has been decided that where a broker hypothecates his customers' securities he may do so, "provided he keeps securities of a like description and amount under his own control." "Under his control" has been decided as "keeping in his own possession." The question would naturally arise, how is business done in Wall Street? and what is

the advantage to the broker of re-pledging his client's securities?

Another astonishing decision on record is that inspectors of election have not the power to determine the genuineness of proxies! What are they then appointed for?

The attention of the student is particularly drawn to the terms "good" and "valuable" consideration. In the case of deposit, and commission or mandate bailments, where the bailee acts "without reward," unless the difference is accurately appreciated the question would not unnaturally arise "how, then, can a bailment be a contract?" The very gratifying success that the author's Theory of Accounts has met with has led him to believe that in publishing these text-books he is supplying an acknowledged and very decided want.

The following books have been consulted by the writer in the preparation of this manual; and to their authors, as well as to numerous friends in the accountancy profession who have favored him with valuable suggestions, he tenders hearty thanks:

White's Manual for Business Corporations.

Essentials of Business Law.—Burdick.

The Care of Estates.—Hill.

Accountants' Guide.—Gottsberger.

Law Dictionary.—Bouvier.

The New Commercial Law.—American Book Co.

Encyclopedia of Accounting.—Geo. Lisle, C. A.

Encyclopedia of Law Forms.—Spalding.

FREDERICK S. TIPSON.

September 15, 1903.

December 1896.

1. Draw the following promissory notes and forms of indorsement:

NOTES.

(a) Not negotiable; maker, John Brown; payee, Walter Jones; amount, \$1,000.25; time, four months; place of payment, Bank of America.

(b) Negotiable; maker, payee, amount, time and place of payment as in *a*.

(c) Negotiable; requiring no indorsement.

INDORSEMENTS.

(d) Indorsement by above payee, in blank.

(e) Indorsement by above payee, to Robinson & Co. in full and further negotiable.

(f) Indorsement by Robinson & Co., relieving them from further liability.

(g) Indorsement by Robinson & Co., to Henry Miller, not further negotiable.

(a) ALBANY, December 15, 1902.

Four months after date I promise to pay to Walter Jones One thousand $\frac{25}{100}$ Dollars at the Bank of America. Value received.

\$1,000.25.

JOHN BROWN.

(b) ALBANY, December 15, 1902.

Four months after date I promise to pay to the order of Walter Jones One thousand $\frac{25}{100}$ Dollars, at the Bank of America. Value received.

\$1,000.25.

JOHN BROWN.

(c) ALBANY, December 15, 1902.

Four months after date I promise to pay to Walter

Jones or bearer One thousand $^{25}/_{100}$ Dollars, at the Bank of America. Value received.

\$1,000.25.

JOHN BROWN.

(d) Walter Jones.

(e) Pay to the order of Robinson & Co.,

WALTER JONES.

(f) Without recourse.

ROBINSON & Co.

(g) Pay to Henry Miller.

ROBINSON & Co.

2. When an indorsed promissory note is not paid at maturity.

(a) What course should the holder pursue in order to prove presentation?

(b) Against whom can the holder bring suit for recovery?

(c) Against whom can an indorser who has been compelled to pay this dishonored note bring suit for recovery?

(d) Under what circumstances is an indorser relieved from liability?

(e) How may the holder be relieved from the necessity of protesting it for non-payment?

(f) What are the principal defenses that may be urged by the maker of a note in an action for non-payment?

(g) What defense (good as against the payee or indorser who has knowledge thereof) will not relieve the maker from liability to a subsequent purchaser in good faith before maturity?

(h) How is the liability of indorsers affected by an agreement between the holder and the maker of the note to extend time of payment beyond maturity?

(a) He should have the note protested by a notary public, and send immediately to the maker and to each

indorser a copy of the certificate of protest, and a notice of non-payment, with a description of the note.

(b) Against the maker or any endorser of the note to whom proper notice has been sent. Indorsers "without recourse" are of course excepted.

(c) Against the maker or any prior indorser to whom proper notice of non-payment has been sent.

(d) By indorsing "without recourse"; by not receiving proper notice of non-payment; by an agreement between holder and maker to extend the time of payment.

(e) By the words "no protest" or "protest waived" appearing on the note.

(f) Infancy, usury, alteration, forgery, want of consideration, and fraud or compulsion.

(g) Want of consideration.

(h) They are relieved from liability.

3. Draw the following bills of exchange and forms of indorsement and acceptance:

DOMESTIC BILL.

(a) Drawer, Smith & Jones, Boston; drawee, Brown & Robinson, New York; amount, \$500.50; payee, Edward Hunt, New York; time, 10 days sight.

(b) Indorsement by payee in blank.

(c) Acceptance by drawee, payable at Bank of New York.

FOREIGN BILL.

(d) Drawer, J. M. Wilson, Son & Co., London; drawee, Flint, Heddy & Co., New York; amount, \$9,000.50; time, 60 days date.

(e) Indorsement by payee to.....in full.

(f) Form of drawee's acceptance.

\$500.50.

BOSTON, MASS., Dec. 24, 1902.

(a) At ten days' sight pay to the order of Edward Hunt Five Hundred $\frac{50}{100}$ Dollars and charge to account of

SMITH & JONES.

To Brown & Robinson,
New York.

(b) Edward Hunt.

(c) Accepted, December 26th, 1902.

Payable at Bank of New York.

BROWN & ROBINSON.

(d)

LONDON, December 10, 1902.

\$9,000.50.

Sixty days after date of this first of exchange (second and third of same date and tenor unpaid) pay to the order of Bartlett & Co., of Boston, Nine Thousand $\frac{50}{100}$ Dollars and charge the same to the account of

J. M. WILSON, SON, & Co.

To Flint, Heddy & Co.,
New York, U. S. A.

(e) Pay to the order of.....

BARTLETT & Co.

(f) Accepted, December 27, 1902,

FLINT, HEDDY & Co.

4. If the drawee of a draft or bill of exchange refuses to accept the same on presentation:

(a) How is the due date of the draft, or bill affected?

(b) In what manner if any is he liable under the draft, or bill, if he has funds of the drawer or is indebted to the drawer?

(c) On what grounds can the holder commence action?

(d) How can a third party prevent the bill from becoming due at once, and what would be his position if obliged to pay the bill?

(a) It becomes due at once, and the holder can demand payment of the drawer forthwith.

(b) The drawee is not liable to the holder until he has accepted it, nor can he be sued by him for refusing to accept. The drawee, however, is liable to the drawer if he has funds of the drawer in his possession and refuses to accept. He may be sued by the drawer for damages sustained by reason of his non-acceptance.

5. What is a *corporation*, and how does it differ from a joint-stock company?

A corporation is an artificial person created by law to transact such business as may be set forth in its articles of incorporation. It has the right of succession or continuance, regardless of change in its membership. A joint stock company, while similar to a corporation in form, and as to its method of transacting business, is more in the nature of partnership as regards the individual liability of its share-holders.

6. Describe briefly the following:

- (a) A sole corporation.
- (b) A corporation aggregate.
- (c) An eleemosynary corporation.
- (d) A public corporation.
- (e) A private corporation.

(a) A sole corporation is a single individual possessed of corporate powers. Such corporations do not exist in

the United States of America. Examples in England are the sovereign, and bishops of the established church.

(b) A corporation aggregate is a collection of individuals united in one body. It is an artificial person, but capable of transacting such business as it may be entitled to the same as a natural person.

(c) An eleemosynary corporation is one formed for charitable purposes.

(d) Public corporations are those created for political purposes. Municipal corporations would be familiar instances.

(e) A private corporation is one founded by private enterprise. Instances would be ordinary business corporations, banks, insurance companies, etc.

7. Answer briefly :

(a) How may corporations be created?

(b) What acts of a corporation are called *ultra vires*?

(c) What is a *franchise*?

(d) Through whom does a corporation act in transacting its business?

(e) By whom must all contracts, deeds, mortgages, leases and other instruments binding a corporation be signed and whence do the signers derive their authority?

(f) Explain the manner of issuing and of transferring the capital stock of a corporation and state the principal rights acquired by stockholders.

(g) What is the limit of a stockholder's liability?

(h) How may a corporation be dissolved?

(a) Corporations are created by the State under general or special law—that is, under the general corporation law, or by charter.

(b) All acts of a corporation exceeding the powers conferred upon it as set forth in its articles of incorporation

are termed "ultra vires," which means "beyond the power of."

(c) A franchise is a right of an exclusive character conferred upon a corporation. Thus the right of a railroad to operate its road is called its franchise, which has a value in itself distinct from that of any other kind of property.

(d) A corporation acts through its officers, who are appointed by its directors. The directors are elected by the stockholders.

(e) Such documents should be signed by the president and the secretary. They derive their authority from the directors as expressed by resolutions, recorded in the corporation minute book.

(f) Each stockholder receives a stock certificate stating on its face the number of shares of capital stock he is entitled to; his name; and the par value of the shares. The stub of the stock certificate contains the same particulars, which are posted to the individual account of the stockholder in the sharer ledger.

When a stockholder desires to transfer he executes a bill of sale and power of attorney authorizing the transfer—a proper form for which is printed on the other side of the certificate. This indorsed certificate is then handed to the proper officer of the corporation, who cancels it and issues new certificates—recording the transaction on the transfer books.

The principal rights of stockholders are (1) to vote at meetings held for the election of officers; (2) to participate in profit earned if distributed in the form of dividends.

(g) A stockholder's liability is generally limited to the

amount of his investment as evidenced by the amount of capital stock he holds. If the corporation becomes bankrupt he loses the amount he has invested and has no further liability. The stockholders of National Banks are, however, liable for the par value of their holdings and for an additional amount equal thereto. Thus, if \$2,000 stock were held by an individual, he would lose this amount and be personally liable to the extent of \$2,000 additional.

(h) Corporations may be dissolved by act of legislature; by expiration of time limit as per charter; by consent of stockholders and surrender of franchise; by forfeiture of franchise for "mis-user" or "non-user"; or by a "quo warranto" proceeding.

8. Answer briefly:

- (a) What is a *contract*?
- (b) How is a contract made?
- (c) What are some kinds of contracts that must be in writing?
- (d) What are some forms of contracts that must be under seal?
- (e) Which contracts if made on Sunday are void, and which are not void?

(a) A contract is an agreement between two or more persons to do or not to do some particular thing for a consideration.

(b) A contract is made orally, in writing, or in writing under seal. The two former contracts are called "parol" contracts; the latter a "specialty" contract.

(c) All those stipulated in the "Statute of Frauds," which requires that the following kinds of contracts must be in writing in order to be binding: (1) Promises to

answer for the debt, default or miscarriage of another ; (2) Agreements made in consideration of marriage, except mutual promises to marry ; (3) Leases of land for more than one year ; (4) Contracts for the sale of lands or any interest in lands ; (5) Agreements that by their terms are not to be performed within one year from the making of them ; (6) Agreements of an executor or administrator to be personally responsible for the debts of the estate ; (7) Contracts for the sale of personal property involving more than fifty dollars, unless some part of the property be delivered, some part of the price be paid, or the sale be by auction.

(d) Bonds, deeds, mortgages.

(e) As a rule all contracts made on Sunday are void except such as would come under the heads of "works of mercy" and "works of necessity." It will be noted that the latter phrase is capable of a very wide interpretation.

9. Answer briefly :

(a) What is a *debt* and what can a creditor demand in payment of a debt ?

(b) When a creditor accepts in satisfaction payment of less than the full amount of a debt, how can the debtor guard against further demands ?

(c) When, where, and to whom must payment of a debt be made ?

(d) Is a debtor legally entitled to a receipt ?

(e) Which has the prior right to apply a payment against any one of several debts, the debtor or the creditor ?

(f) When a partial payment is made on a debt bearing interest, in what manner is it applied ?

(g) When does the period of limitation begin to run, and what are some of the ways in which its operation can be modified ?

(a) A debt is the amount of money due from one person (the debtor) to another (the creditor).

The creditor can demand in payment legal tender money.

(b) He should secure a release under seal, which being a specialty contract implies a consideration; or he might in addition to paying the sum agreed on as satisfaction of the full debt pay some nominal sum *as a consideration*.

(c) A debt must be paid on the day it falls due. It must be paid at place specified (if any), or at the creditor's residence or place of business. Payment must be made to the creditor or to his agent or representative.

(d) No; only as a matter of courtesy. His protection is to take a witness.

(e) The debtor.

(f) Interest is first paid; the balance, if any, being applied to principal.

(g) The period of limitation begins to run whenever the debt is due, or whenever an action for its recovery might have been commenced. Its operation may be modified by the absence of the creditor or debtor from the State at the time the debt became due—when the term of limitation is extended to date of return into the State. A new promise to pay or part payment of principal or interest renews the debt, and makes it good again for the period dating from the new promise.

10. What is a *partnership*? How may the relationship of partner be established? Define *nominal partner*, *silent partner*, *dormant partner*, *special partner*.

The relationship of partnership results from an agreement between two or more persons to place their money

or its equivalent in some undertaking, and to share the profits and losses in certain proportions. Its relationship may be established by entering into a written contract of agreement termed articles of co-partnership; by oral agreement, or by implication—*i. e.*, where the relationship of partnership is assumed from the acts of the parties.

Nominal partner : One in name only. He has no voice in the conduct of the business nor any interest either. But he is liable for its debts.

Silent partner : One who invests money in a firm or enterprise, but whose name does not appear as partner, although he has a voice in controlling the affairs of the business. He is liable the same as other partners as soon as his proper relationship becomes known.

Dormant partner : One who is either silent or ostensible, but has no voice in the management of the business.

Special partner : One whose liability is limited to the amount of his investment. He is a member of a limited partnership, but has no right to participate in the management.

11. In what respects are partners trustees for each other and in what respects are they agents for each other?

As between themselves partners are trustees for one another in regard to the firm property. They are agents for each other inasmuch as they may individually bind the firm by contracts with third persons within the scope of the partnership business.

12. What are the relative liabilities of a new partner and a retiring partner?

A new partner is not liable for the debts of the firm prior to his becoming a member of it unless he expressly agrees to become so. He may become so by agreement with a retiring partner to assume his share of the liabilities, however.

A retiring partner is liable for any debts incurred by the firm subsequent to his retirement, in case of a failure, unless he publishes the fact, and sends proper notices to creditors, etc.

13. How is a limited partnership formed?

A limited partnership can only be formed in those States where statutes have been enacted authorizing the formation of limited partnerships. The parties forming this connection must make and sign a certificate or agreement which is properly executed and filed with the public records of the State and county in which the business is to be conducted. The certificate must include the firm name, names of partners, and amount of capital contributed by each. It is not infrequently found that a firm contains general and special partners. The liability of the special partners would, of course, be limited, while that of the general partners would not.

14. State the difference between a sale and a consignment.

A sale is a transfer of the title of property as well as that of the property itself from one person to another for a consideration. A consignment is the transfer of the custody of property without transfer of the *title* to the consignee. The property still belongs to the consignor.

15. What kind of action can the consignor maintain against a consignee who converts to his own use the proceeds of the sale of consignor's goods?

He can maintain either a criminal action against the consignee for wrongful conversion, or a civil action for default in respect to accounting, or *both* at one and the same time.

June 1897.

1. What is a *bailment*? State the titles, general relations and respective obligations of the parties to a bailment.

A bailment is a delivery of personal property by one person to another upon a contract, express or implied, that the person to whom the goods are delivered will conform to the purpose or object for which the property was delivered. The party who receives the property in trust is called the bailee; the party who delivers it, the bailor. The respective obligations of the parties to a bailment and the consequent degree of responsibility attaching to each depends upon the *kind* of bailment—whether it is for the benefit of the bailor exclusively, the bailee exclusively, or both. The bailee would have to take care of the property entrusted to him, and in doing so would have to exercise ordinary, extraordinary or slight diligence—dependent upon who was to be benefited. On the other hand, the bailee would be held responsible for ordinary, slight, or extraordinary negligence in the care of the property.

2. Define the following kinds of bailment: (a) *deposit*, (b) *commission or mandate*, (c) *loan for use*, (d) *pledge*, (e) *bailment for hire*.

(a) A deposit bailment is a delivery of property to the bailee to be kept by him without reward, and to be deliv-

ered as per contract. (N. B., "without reward" does not mean "without consideration," or there would be no valid contract. In this case the "inducement" is the consideration).

(b) A commission or mandate bailment is one where the bailee agrees to do something with the thing bailed for the bailor without compensation.

(c) A loan for use bailment is the loan of something to the bailee to be used by him without payment and returned to the bailor or disposed of according to his direction when the bailment terminates. *ACCOMMODATION*

(d) A pledge bailment is one where the custody of personal property is transferred to the bailee as security for the payment of a debt or the performance of some other obligation.

(e) A bailment for hire is a delivery of personal property where compensation is given for usage, etc. Bailments for hire are divided into (1) hire of things, (2) hire of services, (3) hire of custody, and (4) hire of carriage.

3. State the principal points of law governing bailments, in respect to (a) return of property to bailor, (b) use of property by bailee, (c) sale of pledge by bailee, (d) liability of bailee.

(a) Return of property to bailor :

(1) Deposit bailment: property must be returned to the bailor at a certain time, or on demand, or to a third party at a certain time or on demand.

(2) Loan for use: property must be returned by the borrower at the time, place, and in the manner agreed on. If no time is specified, it must be returned within a reasonable time; if no place is stated, it must be returned to

the bailor at his residence or the place where it was taken from.

(3) Bailment for hire: the bailee must return the property when the purpose of the bailment is fulfilled in as good condition as received, natural wear excepted.

(b) Use of property by bailee:

(1) Deposit bailment: bailee must not use the property except it would be benefited thereby. Should he do so he must account to bailor for profits less expenses incurred by him.

(2) Pledge bailment: bailor has not the right to use the property, but only to hold it. But should usage be necessary for the preservation of the property, he must account to bailor for profits.

(3) Bailment for hire: property hired must be used only for the purpose specified.

(c) Sale of pledge by bailee:

(1) Pledge bailment: before the bailee can sell the pledge, he must make proper demand for payment of the debt after it becomes due. Payment having been refused on demand, he must give proper notice to bailor to redeem the pledge, notify him of time and place of sale, sell the pledge, and apply the proceeds to payment of the debt. The bailee cannot retain the property as an offset against the debt; he must sell it at an open, public sale.

(2) Bailment for hire: if charges are not paid within a reasonable time, the bailor, after public notice, may sell the property, compensate himself out of the proceeds, and return the remainder less costs to the bailor.

(d) Liability of bailee:

(1) Deposit bailment: this being for the sole benefit

of the bailor, the bailee is only liable for gross negligence in the care of the property.

(2) Commission bailment: the liability of the bailee is the same as in the deposit bailment, and for the same reason.

(3) Loan for use: here the bailment is for the exclusive use of the bailee, and he would be held responsible for slight negligence. He would, however, be exempted from liability for inevitable accidents, i. e., such as could not be foreseen and guarded against.

(4) Pledge bailment: the bailee in this case would be liable for ordinary negligence as the bailment is for the benefit of bailor and bailee.

(5) Bailment for hire: the bailee is responsible for ordinary negligence.

4. What are *common carriers*? To what extent is a common carrier liable as insurer? What security has the carrier for the payment of his charges?

Common carriers are persons who make a continuous offer to the public to transport passengers or merchandise in consideration of receiving compensation for their risk and labor.

He is an insurer of the safety of the goods he carries and is responsible for injury to them unless such be caused by the act of God or the public enemy. Even then he may be held liable if his previous neglect brought the property into danger resulting in such loss.

He has a lien on the property he carries as security for the payment of his charges.

5. What is a general assignment and under what cir-

cumstances may it be set aside? What advantage to the debtor has an insolvent assignment over a general assignment? What are *preferences* in an assignment?

A general assignment is the transfer by a debtor of all his property to another party for the benefit of his creditors. If made for the purpose of keeping it out of the hands of his creditors such a transfer is a fraud upon them and can be set aside.

Under the bankruptcy laws the debtor who has transferred all his property to a trustee elected by his creditors or by the court, who has been honest in his business relations, who has not defrauded any of his creditors or wilfully injured property, and who has acted in accordance with the requirements of the statute, after his adjudication as a bankrupt, may obtain a discharge from all his debts in full, except taxes. His creditors *must* accept the compensation offered them, and the debtor if sued on any debt from which the order discharges him, may plead his discharge as a defence, and thus defeat the action. In the case of a general assignment the acceptance of anything less than the full amount of a debt is optional with any creditor, and the debtor may at any time be successfully sued by a dissatisfied creditor. The advantages of the former kind of assignment are, therefore, obvious.

Preferences are now only those claims whose payment is provided for under the bankruptcy law, viz., all taxes, State and Federal, and wages (not exceeding \$300 to any one person). They are so called because they must be paid in full before any distribution of the assets is made amongst the creditors.

6. When a partnership assigns:

- (a) By whom must the instrument be executed?
- (b) What property may be included?
- (c) What debts must first be discharged?

(a) The instrument must be executed by all the partners.

(b) All firm assets.

(c) Taxes and wages first; then general creditors. Next come loans to firm by partners, and lastly capital investments.

7. Answer briefly the following:

- (a) What are the powers of an assignee?
- (b) How must an assignee qualify?
- (c) How may an assignee resign?

(a) His powers are to convert all assets into cash, and, if necessary, to sue debtors. He may then divide the proceeds ratably among the creditors.

(b) The assignee must qualify by filing inventories and schedules of assets and liabilities and giving a bond as security for the faithful performance of his duties.

(c) An assignee may resign by filing a complete statement of his fiscal acts to date, supported by vouchers, and getting released from his bond.

8. What courses of action under the insolvent laws are open to a debtor who is unable to discharge his obligations?

He may make a general assignment and compound with creditors, getting released in full from obligations; or he may voluntarily ask to be adjudged a bankrupt, and in

due course ask for his discharge, which would free him from all liabilities.

625 9. Define briefly the following instruments: (a) *bill of lading*, (b) *charter party*, (c) *consular invoice*, (d) *bottomry bond*, (e) *respondentia bond*.

(a) A bill of lading is a written memorandum signed by the captain of a vessel as agent for the owner or charterer, and delivered to the shipper acknowledging that the goods mentioned in it have been received upon the vessel for transportation.

(b) A charter party is the contract by which a vessel is hired.

(c) A consular invoice is a bill made out by a shipper of merchandise from one country to another containing cost price, quantity and description of goods shipped, and sworn to before the consul of the country they are intended for at the port of shipment.

(d) A bottomry bond is the obligation given for a loan secured upon a vessel and its accruing freight charges.

(e) A respondentia bond is the same, only the security is the vessel's cargo.

10. What is a *guaranty*? State the titles and the mutual relations of the parties to a guaranty and the consideration necessary to make it binding. How may a surety be relieved from liability?

A guaranty is a contract by which one person agrees to become responsible for the debt or default of another.

There are three parties to a guaranty: the debtor, who is primarily responsible; the creditor to whom he is responsible; and the guarantor. Where the guaranty is

made at the same time as the principal contract one consideration will support both. But if the guarantee be made subsequently, there must be separate consideration to make the contract binding. A nominal sum would be sufficient.

In the case of a continuing guaranty the surety may be relieved from liability if the agreement be altered; if the time of payment be extended; or if fraud has been practiced upon him.

11. What is the extent of the liability of the guarantor under *each* of the following: (a) guaranty for payment, (b) guaranty for collection, (c) continuing guaranty?

(a) In the guaranty for payment the guarantor becomes absolutely liable for the full amount of the debt immediately the debtor refuses to pay it.

(b) In the guaranty for collection the necessity is placed upon the creditor to show that he is unable to collect from the debtor by legal process before the guarantor can be called upon; but when that point is proved the creditor can collect from the guarantor the full amount of the debt, and any costs he has had to pay in his attempts to collect from the debtor.

(c) In the continuing guaranty the guarantor guarantees all indebtedness up to a certain amount, and so long as the specified amount is not exceeded, he is absolutely liable, for the debtor's default.

12. On what loans may a higher rate of interest than 6% be taken?

What is the time for the payment of a note falling due on (a) Saturday, (b) Sunday, (c) Saturday when the following Monday is a legal holiday?

Pawnbroker's loans; call loans in Wall street; and maritime loans.

(a) Due Saturday; time for payment, Monday.

(b) Due Sunday; time for payment, Monday.

(c) Due Saturday when the following Monday is a legal holiday; time for payment, Tuesday.

13. In the case of a debt secured by collateral what course is open to the creditor?

The creditor may sell the collateral at public sale, recoup himself for debt and interest, and return excess balance (if any) to debtor.

14. Define briefly each of the following terms: (a) agent, (b) agency, (c) general agent, (d) special agent, (e) power of attorney. (f) In what cases is an acknowledgment of execution of a power of attorney necessary?

(a) Agent—one who acts for and represents another, called his principal.

(b) Agency—the legal relation existing between an agent and his principal.

(c) General agent—one who is appointed to do acts of a class.

(d) Special agent—one who is appointed to do individual acts.

(e) Power of attorney—an instrument under seal formally constituting one person agent for another.

(f) An acknowledgment of execution of a power of attorney is necessary whenever the authority conferred is to execute any instrument that is to be recorded.

15. In a certain stock corporation only 50% of the subscribed capital has been called. A has paid all the installments called and has loaned to the company an additional sum, for which he has taken its promissory note, and has transferred the note to B. B demands payment. May the company call further installments on A's stock, and offset the amount so called against the promissory note held by B? Explain your answer.

The corporation may call further installments on *all* of its capital stock, but not on A's only. The amount so called could not be offset against the note held by B for the reason that if a note is transferred for value *before* maturity, it cuts off cross claims and other defences which might have been set up if the note had remained in the hands of A.

December 1897.

1. What is an *executory contract*, and in what respect does it differ from a contract executed?

An executory contract is one in which the thing agreed upon has not been done; where it has, the contract is termed executed. A contract may be executory on the part of one, and executed on the part of the other party to it. An executed contract signifies that the rights referred to in it have been acquired.

2. State (a) the essentials to the validity of a contract, (b) exceptions to the general rule as to the validity of a contract, (c) the act or acts necessary to make a contract of sale valid.

(a) To make a valid contract the parties to it (1) must be competent; (2) must give their consent; (3) there must be consideration; and (4) subject matter, i. e., something to contract about.

(b) Exceptions:

(1) As to competency: certain persons have been declared by law incompetent to make valid contracts. Such are the insane, idiots, drunkards, infants, and alien enemies. But insane persons may make valid contracts in lucid intervals; drunkards, when sober; and infants for necessities.

(2) As to consent: parties may have consented, yet the contract may be invalid; for the consent may have been given without understanding the terms of the agreement, or through duress or fraud.

(3) As to consideration: specialty contracts are said to import a consideration. Negotiable paper in the hands of an innocent purchaser can be collected from the maker by the holder, although not by the original payee to whom the note was given as accommodation, i. e., "without consideration."

(4) As to subject matter: the contract may possess every element of validity and yet be invalid, because the law has declared that certain subjects contracted on cannot be enforced. Such are those that are against public policy, immoral, or fraudulent.

(c) The acts necessary to make a contract of sale valid are offer, acceptance, and conformity to the statute of frauds.

3. (a) When goods are sold on credit, in whom is the right of possession and of property vested?

(b) State the rights of the vendor and of the vendee in case of the insolvency of the vendee before obtaining possession.

(a) In the vendee.

(b) The vendor has the right of "stoppage in transitu." The vendee has the right to pay for the goods and compel delivery.

4. (a) After the delivery of goods to a common carrier, as ordered by the vendee, in whom do the right of property and the risk rest?

(b) What rights or remedies has the vendor of goods sold on credit, in case the vendee becomes insolvent while the goods are *in transitu*?

(a) The vendee.

(b) He has the right of stoppage.

5. Show the difference between a general agent and a special agent.

The decision of the Supreme Court of the United States is: "A general agent is one who is appointed to do acts of a class, while a special agent is one appointed to do individual acts."

6. What redress has a principal in case his agent pledges (a) the goods of the principal, (b) the negotiable paper of the principal?

(a) This would depend largely upon trade custom and the use the agent makes of the avails of the pledge. If the agent does not disclose the name of his principal and converts to his own personal use the proceeds, he could be sued in both a civil and a criminal action, and the goods probably be replevined.

(b) In this case unless the agent is empowered to sign for his principal he would have to commit forgery to negotiate the notes. The principal could then institute criminal proceedings against his agent, and by notifying the makers of the notes of the forgery secure payment at maturity.

7. (a) To what extent is a principal bound by a contract made by his agent?

(b) In the case of goods sold by an agent, what are the rights of the principal in respect to payment by the purchaser?

(a) So long as an agent acts within the scope of his authority the principal is liable for all contracts made by him. The principal will also be bound if the agent exceeds his authority, if his acts are apparently authorized by him (the principal), or by business usages. This applies only to general agents. In the case of special agents the principal will only be bound by contracts specifically authorized by him and cannot be held should the agent exceed his authority. It is the duty of third parties in contracting with a special agent to inform themselves of the precise extent of his authority.

(b) The principal may direct that all payments be made to him personally, and he has the right to sue where payment so asked for is refused.

8. What is *each* of the following: (a) a *general lien*, (b) a *particular lien*? State what is necessary to create a lien.

(a) A general lien is the right of one party to retain possession of any property of another against whom he has a claim.

(b) A particular lien is the right of one party to retain possession of some particular property in connection with which he has some claim against another. Familiar instances would be the lien of a common carrier, of a bailee, or of an inn-keeper.

To create a lien there must be possession, either legal or equitable, of the property liened, and some charges due upon the same.

9. Show how the authority of an agent may terminate.

The authority of an agent may terminate (1) by revo-

cation of his authority by his principal; (2) by renouncing the authority of his principal; (3) by expiration of time limit, when he is appointed for a certain stated period; (4) by such a change in the condition of either principal or agent as would produce incapacity to act, e. g., insanity, bankruptcy or death.

10. Define *partnership*, *general partner*, *special partner*. State the rights of a special partner in case of the insolvency of the firm.

Partnership results from a contract entered into by two or more persons to combine their money, effects, labor, or skill, or some or all of them, in some lawful business and to share the profits and losses as such between them.

A general partner is one of the ordinary partners in a firm and is personally liable to firm creditors not only for the amount of capital he contributes to the firm, but if the firm assets are insufficient to pay its creditors in full, he is personally liable to the full extent of all his private property.

A special partner is a member of a limited partnership, his share of liability to firm creditors being limited to the amount of his capital investment. He takes no share in the management of the affairs of the firm; if he does, he may be held liable as a general partner. In a limited partnership it is usual to find general partners and one or more special, who are separately designated as such.

His rights are restricted to immunity from any greater claims than the amount of his capital.

11. (a) To what extent does the act of one partner bind his copartners?

(b) Must a partner account to his firm for profits made by him in a separate business?

(c) State the process of dissolving a partnership.

(a) A partner is an agent of the firm and also of his co-partners for the purposes of the partnership business. Any act therefore done by one partner in carrying on firm business in the usual way is binding on his co-partners. He may hire agents, buy and sell goods, pay and collect debts, and in general, enter into all contracts for them within the scope of the partnership concern.

(b) It would depend upon the terms of the articles of co-partnership. If it were stipulated that each partner was to devote the whole of his time exclusively to partnership business, and it could be proved that such business had suffered through the failure of one of the partners to do so, in consequence of attending to the affairs of his separate business, it is probable that he would have to account to his firm for profits made in such business. But if this stipulation were not inserted, and bad faith towards his firm could not be proved, it is very questionable whether he could be so called on.

Of course, if he made use of the firm assets in the prosecution of a separate business, he could undoubtedly be called on for an accounting to the other members of his firm.

(c) Partnership may be dissolved (1) by the act of the parties—mutual consent or otherwise; (2) by the act of God, as the death of one of the partners; (3) by act of the law, as the bankruptcy of the firm or one of the partners; (4) by a valid assignment of all the partnership effects for the benefit of creditors; (5) by the assignment of the whole of one partner's interests to his co-partner, or a stranger; (6) by limitation, i. e., expiration of the period for which the partnership was formed.

Either a receiver is applied for or one of the partners agrees to act for the others with powers in liquidation. He (1) completes unfinished engagements; (2) converts into cash the assets; (3) liquidates outside and then partnership liabilities, i. e., capital *pro rata*.

12. State briefly the effects of a dissolution of a partnership on the rights and powers of the individual partners.

On the dissolution of a partnership the right of the members to bind one another as agents ceases. The liquidating partner has the power to make such contracts as may be necessary to finish up uncompleted firm engagements, but he is not allowed as a rule to make further engagements. His powers are strictly what is termed "in liquidation."

13. Explain the following points regarding a guaranty: (a) nature and purpose, (b) manner of making, (c) how the position of a guarantor of negotiable paper differs from that of an indorser.

(a) A guaranty is an agreement by one party to become responsible for the debt or default of another, which, in order to conform to the statute of frauds, must be in writing. The parties to it are the creditor, the debtor and the guarantor. Its purpose is the guaranteeing to the party to whom given the payment of a debt or the performance of certain duty by a third party.

(b) Being a contract, there must be consideration. If the guaranty be given at the time the principal contract is made, the original consideration will support the guaranty also. But if made at any subsequent time separate

consideration must be given. The guarantor simply writes for value received: I guarantee the payment (or collection, or) of this and signs his name with guarantor underneath.

(c) The position of a guarantor of negotiable paper differs from that of an endorser principally in this respect: he is not entitled to prompt notice of protest. As soon as the debtor fails to pay he must, on notification, pay for him. But as an offset to this he acquires the right of *subrogation*.

The student will do well to bear in mind the difference between "guaranty for collection" and "guaranty for payment."

14. (a) Describe the steps necessary for the formation of a business corporation.

(b) State what is requisite for the validity of a contract by a corporation.

(a) The name of the proposed corporation having been selected by the incorporators and approved (as not conflicting with that of any existing domestic corporation) by the Secretary of State, any three or more natural persons, two-thirds of whom must be citizens of the United States, and at least one of them a resident of this State, may become a corporation by making, signing, acknowledging and filing a certificate which shall contain:

The name of the corporation;

The purpose for which it is to be formed;

The amount of the capital stock and amount of preferred stock, if any;

The number and par value of shares and the amount of capital with which it is proposed to begin business;

The location of its principal business office ;

Its duration ;

The number of its directors (not less than three) ;

The names and post office address of directors for the first year ;

The names and post office address of the incorporators, with the number of shares each agrees to take. The fees having been paid to the Secretary of State and the State Treasurer, the certificate is filed and recorded in the office of the Secretary of State, a copy of it filed in the office of the clerk of the county in which the office of the corporation is to be located, and the corporation may commence business as soon as the amount of capital specified in its articles of incorporation as the amount of capital with which it will begin business shall have been paid in.

(b) In order to be valid, a contract by a corporation must be authorized by the board of directors ; recorded in the minute book ; be executed by the proper officer or officers, and in the manner stated in its by-laws. It must also properly fall within the scope of the business as outlined in its articles of incorporation, i. e., it must not be *ultra vires*.

15. State what facts must be established to show the validity of an issue of bonds by a municipality.

(1) Authorization by record on municipality minute book.

(2) Specified purpose.

(3) Provision for redemption at maturity.

(4) Issue must not work the creation of an excess of debt limit.

June 1898.

1. (a) What are the essential elements of a sale? (b) What is the effect of a sale of goods in fraudulent possession of the vendor? (c) What is meant by *a sale to arrive* and what is the legal effect of such a sale?

(a) The essential elements of a sale are: (1) the parties must be competent to contract; (2) they must mutually assent to the contract in the same sense; (3) there must be a consideration; (4) there must be subject matter or something sold; (5) the sale must conform to the statute of frauds.

(b) It can be set aside.

(c) By a *sale to arrive* is meant a sale of merchandise "en route" before actual arrival. The sale is conditional on the arrival of the goods, i. e., if the goods do not arrive there is no sale. Such a sale, however, may be made absolute if the bill of lading be transferred by the vendor to the vendee as it would indicate an intention on the part of the parties to transfer the title, unless an express agreement were made to the contrary.

2. Answer the following in relation to a promissory note: (a) How may the indorser be relieved from liability? (b) How is the liability of an indorser affected by an arrangement between holder and maker extending the time of payment? (c) How far is an indorser holden when the maker becomes insolvent and settles with his creditors for 50 cents on the dollar?

(a) The indorser is relieved from liability: (1) by indorsing "without recourse"; (2) by failure to receive prompt notice of non-payment; (3) by an arrangement between maker and holder to extend the time of payment.

(b) He is relieved from liability.

(c) For the balance.

3. Is the validity of a note or a check affected by the fact of its being dated on a legal holiday? on Sunday? Explain. If the date of a note should be changed by the holder, would its validity be affected thereby?

The validity of a note or check is not affected by its being dated on a legal holiday; but if dated on a Sunday, either would, according to the strict letter of the law, be void, as all contracts entered into on Sunday, except into for necessities or works of mercy, are void. Still, in practice, the date of the performance or execution of the contract would probably be the determining factor.

Any alteration on the face of a note made by the holder without the consent of the maker would make it invalid as a negotiable instrument.

4. (a) If A gives a note to B in payment of a debt, and it is indorsed by C as surety, can B collect from C if he has not protested the note? Give reasons for your answer.

(b) Money is obtained at a bank on a note payable to order; the indorsement is genuine, but the maker's name is forged. On whom does the loss fall? Why?

(a) Yes, because he is not entitled to prompt demand and notice of refusal like an endorser. If, however, C can prove that, owing to B's failure to make demand and

send him prompt notice of non-payment, he has suffered loss which he might have avoided, he is relieved from liability.

(b) The loss falls on the endorser because he impliedly contracts with the bank that the instrument is genuine.

5. If a man is in the employ of a firm and receives an interest in the profits in lieu of salary, is he liable as a partner? If he has no salary but shares in profits and losses, is he a partner? Explain.

No; because he has no interest in the capital. But if he shares in profits and losses he would be held liable by third parties as a partner by implication, although no partnership agreement existed.

6. One partner of a firm, who is responsible financially, is in debt to the firm beyond his right to draw money; how can said indebtedness be collected without dividing the firm? Can one partner be sued by another member of the firm? Could the claim be assigned to a third party and collected by him?

He could give his personal note to an individual member of the firm, who could indorse it over to the firm's attorneys for collection.

One partner cannot bring an action at law against another member of the firm for any act of omission or commission in the partnership affairs during the continuance of the partnership.

Yes.

7. (a) What is meant by *agency*? (b) How should an agent's authority be conferred? (c) Has an agent

power to delegate his authority? (d) Has an agent who has sold goods for a principal a right to collect the amount due for the same? (e) Mention and differentiate the classes of agents.

(a) Agency is the legal relation existing between one person who acts for and represents another called his principal.

(b) An agent's authority may be conferred by parol, either orally or by letter. The more formal way, however, is to confer it by power of attorney executed under seal.

(c) No, unless expressly authorized by the principal, or unless the nature and usages of the business require or justify it.

(d) The right depends upon the *kind* of agent. A factor has the right to collect from the purchaser unless he has been definitely notified to the contrary, while as a general rule a broker is not. The right is largely influenced by custom and usage.

(e) Agents may be divided as follows :

- (1) Special and general; (2) limited and unlimited;
- (3) factor and broker.

A general agent is one who is appointed to do acts of a class; a special agent to do individual acts.

A limited agent is bound by particular instructions; the term is applied to a general agent whose authority is restricted and limited. An unlimited agent is a special agent to whom authority has been given to use any means he may find necessary to accomplish the thing to be done.

A factor is an agent who has the property of his principal in his own possession for sale. A broker is an agent employed to negotiate sales between the buyer and seller; the thing sold does not usually pass into his possession.

It is quite customary, however, for the same person to be factor and broker.

8. If an agent exceeds instructions in making a contract, can the principal be held, always supposing that the other party to the contract does not know to what extent the agent's powers are limited? Define precisely the extent of a principal's liability for acts of his agent.

Yes, provided the act of the agent comes within the scope of the agency business. As a rule the principal is liable for the acts of a general agent—even though he exceed the scope of his authority; provided the acts be such as are customarily performed by a general agent in that particular line of business. In the case of a special agent the case would be different; it is the duties of third parties to ascertain the precise extent of the agent's authority.

The liability of a principal for acts of his agent arises (1) under the contract; (2) from the wrongful act of his agent; and (3), by subsequent ratification of his unauthorized act.

(1) Under the contract: the principal is liable for all the acts of his agent done within the scope of his authority. If the agent's authority be limited by private instructions, the principal will be liable if he exceed them, provided third parties have no knowledge of such special instructions.

(2) Wrongful act of agent: the principal is liable for all wrongful and negligent acts of his agent—except where he commits a willful act of trespass, not within the scope of his authority. The willfulness of the act relieves the principal.

(3) Ratification of unauthorized acts: this may be expressly done by assent of the principal, or may be inferred from his failure to disaffirm and repudiate the acts of his agent.

9. State what is required to constitute a partnership. Define *limited partnership* and state how it is constituted.

To constitute a partnership there must be an agreement between two or more persons to combine their labor, property, and skill, or some of them, for the purpose of engaging in some lawful trade or business, and to share the profits and losses, as such, between them.

This agreement may be written or oral; or it may be inferred from the acts of the parties.

A limited partnership exists where there is at least one general partner who manages the business and is liable without limit for all the partnership debts, and one or more special partners whose liability for firm debts is limited to the sum contributed by each to the firm capital. In order to constitute such a partnership a certificate or agreement must be properly executed by the persons desiring to unite, which must be filed with the public records of the county in which the business is to be transacted. The name of the firm, nature of the business, names of the partners, and the amount of capital contributed by each should be stated. The terms of the partnership should also be published in the press.

10. What is a *factor*? Explain the difference between a factor and a broker.

A factor is an agent who receives personal property

and sells it for a commission. He differs from a broker in that the property about to be negotiated comes into his possession; whereas this is not the case with the broker.

11. What is a *warranty*? What is the rule of damages for breach of warranty?

A warranty is a contract on the part of the seller to be responsible for damage should the property sold be not as represented and described; it must be supported by a consideration, and may be either express or implied. The rule of damages for breach of warranty is (1) if the vendee has paid the price, he may sue the vendor for the damages; and (2) if he has not paid it he may set up his claim as partial defence to any action brought against him for the price. The *measure* of the damages is generally the difference between the value of the goods sold and the value of them had they been as represented. The vendee, however, may in special cases be entitled to special damages.

12. Explain the difference between an attorney in fact and an attorney at law. Write out a form of power of attorney to sign checks and indorse negotiable paper.

An attorney in fact derives his power to act from the letter or power of attorney of his principal, by whom he is appointed, while an attorney-at-law is a professional lawyer, who has passed certain prescribed examinations and has been "admitted to the bar."

FORM OF "POWER OF ATTORNEY."

Know all men by these presents:

That I, John Brown, of Utica, County of Oneida and

State of New York, have made, constituted and appointed, Henry White, of Albany City, my true and lawful attorney for me and in my name, place and stead, in transacting any business directly or indirectly with the Latimer Exchange Bank, N. Y., its officers or agents, to sign, indorse, draw, accept, make, execute and deliver, all such notes, checks, bills of exchange, and other contracts or instruments in writing, with or without seal, and such verbal contracts as he may deem proper, giving and granting unto my said attorney full power and authority to do and perform all, any, every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof; and any such notes, checks, bills of exchange, contracts or instruments, signed, indorsed, drawn, accepted, made, executed or delivered by my said attorney, and which shall be hereafter received by or come to said bank or its said officers or agents shall bind, and are hereby ratified and confirmed by the undersigned.

In *witness whereof*, I have hereunto set my hand and seal the fifteenth day of February, in the year one thousand and nine hundred and three.

Sealed and signed in presence of

JOHN DOE,

RICHARD ROE.

JOHN BROWN [seal.]

13. Define *usury* and state the penalty for usury. Mention the principal exemptions from the operation of the usury law.

Usury is the taking of more interest for the use of money than the law allows.

The penalty in New York State for usury is forfeiture of principal and interest.

The principal exceptions from the operation of the usury law are (1) pawnbrokers' loans; (2) call loans in Wall Street; (3) maritime loans.

14. How may a partnership be terminated? What steps should be taken by a retiring partner to relieve himself from further partnership responsibility when the business is continued by the former copartners?

A partnership may be terminated (1) by agreement of all the partners; (2) by act of one of the partners; (3) by a decree of a court; (4) by operation of law.

He should, on retirement, notify all the partnership customers and creditors of the severance of his connection with the firm, and advertise the fact in the public press.

15. When a portion of the stock of a corporation is held by the company and stands in the name of the treasurer as trustee, can the treasurer vote the stock at an annual election of directors, and if so, must he vote it as instructed by the old board of directors?

Such stock could not be voted on.

December 1898.

1. When does a deed conveying real estate take effect? Is there any legal presumption as to the time a deed took effect, and if so, is this presumption subject to rebuttal? Give reasons. Define *escrow*.

A deed conveying real estate takes effect upon delivery and acceptance.

The legal presumption as to the time a deed took effect is the date of its acknowledgment; but this is subject to rebuttal because the consideration might not have passed until a subsequent date and the deed not delivered.

Escrow is the delivery of a deed to a third party to be by him delivered to the grantee upon the event of certain conditions, upon which last delivery the transmission of title is complete.

2. A in Boston offers by letter a quantity of shoes at a certain price to B in New York. B mails a letter from New York to A in Boston, declining the offer. Three hours later B in New York telegraphs A in Boston as follows: "Offer accepted. Ship at once." This telegram is received by A two hours in advance of B's letter of declination. Is there a contract? Explain fully.

There is a contract.

A contract of sale consists of offer and acceptance. A having received the telegram, and ignorant of the sending of a letter by B, is justified in considering acceptance complete, and in shipping the goods at once.

3. A indorses B's note in favor of C for \$1,000. At the same time he guarantees in writing the payment of a note by B to C for the same amount. Neither note is protested at maturity, and neither is paid by B. C sues A for the amount of the two notes. Can he recover, and if so, how much? Give reasons for your answer.

C can recover \$1,000 from A as guarantor; nothing from A as indorser.

C cannot recover from A as indorser because he failed to protest the note and notify him promptly of non-payment. Such omission relieves the indorser from liability.

C can recover \$1,000 from A as guarantor because usually a guarantor is not entitled to prompt notice of such payment.

4. What rights and remedies have two equal partners in a business when they are irreconcilably divided as to the management of its affairs?

(1) They may secure a dissolution by a decree of a court of equity and the appointment of a receiver.

(2) One partner may assign the whole of his interest for value to the other or to a third party.

(3) They may dissolve the partnership by mutual consent, one of them acting as liquidator.

5. How must the contracts of a corporation be made? Are there any exceptions to the general rule? Explain fully.

Contracts must be made in the manner laid down in the by-laws. They must be authorized by the board of directors as evidenced by resolution duly recorded.

This applies to all contracts of importance. But the of-

ficers of the corporation are the agents of the directors and can as a rule make all contracts for the general carrying on of business. Were this not so the directors would have to be in perpetual session. It is clear then that the directors at their meeting explicitly (by resolution) or impliedly (by non-dissent) ratify the acts of their agents—*i. e.*, the officers of the corporation.

6. What is meant by *stoppage in transit*? Give an example showing the proceedings.

By stoppage in transit is meant the right which the vendor of goods has to order the carrier not to deliver them to the party previously directed (the vendee), but to hold them subject to his (the vendor's) order.

Example: A (vendee) orders goods from B (vendor) and directs them to be shipped to him by the American Express Co. B, after dispatching the goods, learns that A is in failing circumstances and has allowed two notes to go to protest. He wires or writes to the express company not to deliver the goods but to hold them subject to his order. The goods must be in transit; and the vendor must be assured of the insolvency of the vendee.

7. Explain what is meant by the statement that "a common carrier is an insurer of goods entrusted to him to be transported to a designated destination." Are there any qualifications or exceptions to this liability? Give reasons and full explanation.

It means that if the goods entrusted to him for transportation are lost, destroyed, or damaged, he may be held responsible.

. An injury to goods caused by the act of God or the

public enemy would exempt the carrier from his responsibility, unless the loss were caused by his previous neglect in bringing the property into danger. Thus if his delay exposes the property to destruction, or if he take a different route from the one agreed upon, he becomes liable for loss. The carrier may limit the amount of his liability unless the value of the article is stated by the shipper and is received with full knowledge of its value. The carrier cannot limit his liability by a printed notice unless the attention of the shipper is expressly drawn to it.

8. Define *arbitration* and give the general rule by which the proceeding is governed. In what cases is arbitration usually resorted to? Wherein does an arbitration differ from a reference?

Arbitration is an agreement to submit a disputed claim to the judgment of a third party or parties called arbitrators, and to be bound by their decision. The parties disputing may agree to accept a third party—mutually acceptable as an arbitrator; or they may each select a representative and agree that the parties so selected shall agree on an arbitrator. The arbitrator's decision is binding if given in the terms of the contract submitted to him, and this decision would be a defence to a suit in which anything else was demanded on the claim. Either party can revoke his submission prior to the time of the arbitrator's award; but when the decision is rendered, it at once becomes binding.

Arbitration is usually resorted to where it is deemed desirable to save the expense and delay of litigation; in partnership disputes, and in such cases as labor strikes, etc.

Arbitration differs from a reference in the following respects: (1) In an arbitration, the arbitrator is selected by the disputants themselves, whereas the referee is appointed by the court. (2) In an arbitration either party may revoke his submission prior to the arbitrator's decision, whereas in a reference—when once entered on, neither party can withdraw previous to the referee's decision without being non-suited. (3) The arbitrator is both jury and judge, while the referee simply takes the testimony and reports to the judge by whom he is appointed, for a decision in the case.

9. What is a *broker*? What is meant by the terms *bought note* and *sold note*? Illustrate, and show to what extent such notes are used.

A broker is an agent who acts on behalf of another person in buying or selling. He is an intermediary between two parties: the buyer and the seller. In general there are two classes of agents: factors and brokers; the distinction being generally that in the case of factors the goods of his principal come into his possession, whereas this is not the case with brokers. It often happens, however, that an agent is both factor and broker.

"Bought" and "sold" notes are the records of a transaction which a broker who has carried out the transactions on behalf of one or both parties sends to the principals. The record which he sends to the purchaser is called the bought note, and that which he sends to the seller the sold note. There are three varieties of bought and sold notes.

(1) "Sold for you to C. D.," or "Bought for you from A. B." These notes are signed by the broker with the work "Broker" after his signature. As the principals are

disclosed, the broker can neither sue nor be sued on such a contract.

(2) "Sold for you" or "Bought for you." The broker signs his name with "Broker" afterwards. As he has signed as broker he can neither sue nor be sued on the contract.

(3) "Sold to you by me" or "Bought of you by me." This is signed by the broker without adding the word "Broker." Here the broker has assumed the position of principal, and as such can sue and be sued. All stock exchange transactions and wherever a broker is made use of to buy or sell are evidenced by these notes.

10. What is meant by *ultra vires* in regard to the act of a corporation? Explain, and give an example of such an act.

Ultra vires means "beyond the strength" or "outside of the power of." Any contract made by a corporation involving ventures outside of and not within the scope or powers given by its charter would be said to be *ultra vires*.

The articles of incorporation of every corporation must set forth the purpose or purposes for which it is to be formed, i. e., the nature of the business it proposes to engage in. It may not engage in any business foreign to this. If it does it acts *ultra vires*.

It has been decided (*Nat. Park Bank v. G. A. M. W. and S.*, 116 N. Y., 281) that a manufacturing corporation has no power to endorse accommodation notes. Should it do so, the act would be *ultra vires*.

11. When the capital of a corporation is legally in-

creased, have the old stockholders any pre-emptive right to purchase the new stock? Give reasons.

They have.

The capital of a corporation can only be increased by the consent of all or a majority of the stockholders. By withholding or giving their consent they are able to enforce this right. The right to subscribe for or purchase such stock, particularly in the case of a corporation doing a flourishing business, is sometimes very valuable.

12. What is a *receiver*? What is his first duty on taking possession of property or trust funds committed to his care? Give reasons and illustrations. How should he deposit trust funds in a bank? Illustrate.

A receiver is a person appointed by a judge of a court of law to take charge of property where the interests of third parties are likely to be injured. After he has been appointed and his bond filed, he should give notice of his appointment by publication and advertise for the payment to him of all monies due the estate and for the presentation to him of all claims. He should then have the property insured and appraised and deposit all funds in a bank in his own name as receiver:

e. g. JOHN BROWN,
Receiver for Smith & Martin.

13. What is meant by the rule *hearsay evidence is excluded*? Illustrate. State the rule as to the admission of books of account as evidence in court. Explain.

"Hearsay" is the evidence not of what the witness knows himself, but of what he has heard from others. Such

evidence derives its value from the credit to be given to the veracity and competency of some other person and is merely a recital or assertion. It is excluded for two reasons: (1) Because the party making such declarations is not under oath; and (2) because the party against whom it operates has no opportunity of cross-examination.

A witness stating that he had heard Mr. So-and-so say that *he* had heard certain statements made would be met with "I object" on the part of counsel and told to confine his testimony to matters of personal knowledge.

Books of account are not evidence *per se*, i. e., the mere production of a ledger with charges and credits showing a balance due by defendant to plaintiff would not be evidence in itself, but only as substantiated by collateral evidence, such as the books of original entry, correspondence, shipping receipts, etc., supported by the testimony of the writers under oath.

14. Where in New York must a corporation file the annual report required by law? What must this report contain? What remedy has a director when the annual report, despite his protest, has not been filed? What is the penalty for failure to file an annual report?

The annual report must be filed in the office of the Secretary of State in Albany.

The report must contain:

(1) The amount of its capital stock and the proportion actually issued.

(2) The amount of its debts or an amount which they do not exceed.

(3) The amount of its assets or an amount which its assets at least equal.

The duty of making and filing the annual report has been transferred from the directors to the executive officers of the corporation. Any officer who fails to file the annual report after being requested in writing by a stockholder or creditor becomes liable to a fine of \$50 a day as a penalty for every day he delays.

15. A policy of insurance contains a clause exempting the company from liability if the insured premises remain idle or vacant 20 days without the permission of the company indorsed in writing on the policy. A policy holder applies to the agent who issued the policy for such permission, and the agent gives permission orally, saying that the written consent of the company is not necessary. The insured building burns. The owner sues the company. In whose favor should judgment be rendered? Why?

What is the duty of an executor in regard to policies covering property of the testator?

The judgment should be rendered in favor of the insurance company, because the extent of the agent's authority was *in this respect* stated in the policy, and it was the duty of the insured to have read his policy. Had he done so he could have ascertained the precise limits of the agent's authority in this respect and have known that as he was exceeding his stated powers he could not bind his principal, the insurance company.

All existing policies should be transferred to his own name as executor, and all new ones taken out in the same way.

June 1899.

1. What is an *account stated*? To what extent is it conclusive? Does the mere rendering of an account make it an account stated? On what grounds may an account stated be opened?

An account stated is an account rendered by one party (the creditor) to another (the debtor) and accepted by him as correct. This acceptance may be expressly stated; but if the debtor fails to object within a reasonable time his assent to the correctness of the account will be implied by law.

It is conclusive upon the debtor and creditor as to the accuracy of the items in the statement without further proof.

The mere rendering of an account does not make it an account stated, because the debtor may refuse to assent to the correctness of the items, or it may be rendered by the creditor (E. O. E.) (errors and omissions excepted). To make it an account stated the statement must be accepted by the debtor as correct.

An account stated may be opened where the party objecting can show fraud, mistake or palpable error.

2. After how many years is a mutual account between merchants barred? When does the statute of limitations begin to run?

A mutual account between merchants is barred by the statute of limitations after six years. The statute of lim-

itations begins to run from the date of the last item on either the debit or credit side of the account.

3. A makes a bond and mortgage and afterward transfers the mortgaged property to B. As the mortgage approaches maturity B applies to the holder of the mortgage for an extension of the time payment. Will the granting of such an extension affect the liability of A on his bond, and if so, in what way?

The granting of such an extension of time will relieve A from his liability, because any extension of time made without the consent of the guarantor or surety relieves him from liability.

4. What is a *contract*? On what is a contract founded? State the difference between an express contract and an implied contract. What certain conditions are requisite to the validity of an express contract?

A contract is an agreement between two or more parties to do or not to do something for a consideration.

It is founded upon an offer and acceptance to do or not to do something in the same sense.

In an express contract the offer and acceptance are made either in writing or orally; in an implied contract they are inferred from the acts of the parties contracting.

The conditions requisite to the validity of an express contract are: There must be subject matter, i. e., something agreed to be done or not to be done; the parties must give their consent; they must be legally competent; there must be consideration.

5. How is a pledge of stock usually made? Must the pledgee return to the pledger the identical certificate

representing the stock pledged? Has the pledgee the right to sell or repledge the stock?

The stock certificates are endorsed in blank and delivered by the pledgor to the pledgee. A written, signed memorandum to the effect that the stock is held in pledge is generally handed to the pledgor, a copy of which is attached to the stock certificate.

No; not necessarily.

The pledgee has the right to sell or repledge the stock provided he keeps "under his control," i. e., "in his possession" other securities of a like kind and amount (Douglas & Jones vs. Carpenter, 17 App. Div., N. Y., 329).

6. State completely the law in respect to the application of payments made on account, where there are several distinct debts or evidences of debt.

The debtor, on paying, has the right to stipulate against which debt his payment is to be placed. If he fails to do this, the creditor may appropriate the payment according to his own wishes. If neither debtor nor creditor appropriates, the law will do so in such a way as will do justice to all parties.

7. Mention several different ways in which a partnership may be dissolved. What effect has a dissolution on the property, interest in the joint stock, or joint rights of the partners, or on their powers over old debts due to them or by them?

A partnership may be dissolved: (a) by agreement of all the partners; (b) by act of one of the partners, i.e., by assigning all his interest, or in some affirmative way

renouncing the contract; (c) by a decree of account on any of the following grounds:

(1) Improper or fraudulent conduct on the part of one or more of the partners.

(2) Violation of the articles of co-partnership.

(3) The exclusion of a partner from his proper share in the management.

(4) Continued quarreling amongst the partners.

(5) Intemperance, dissipation or gross immorality.

(6) Inability of a partner from any cause to perform his part of the contract.

(d) By operation of law, e. g.

(1) Death of a partner.

(2) Insanity or imbecility of a partner.

(3) Sale of a partner's interest on execution against him.

(4) Bankruptcy of a partner.

(5) Breaking out of war between the countries where the partners reside.

(6) Any event happening which severs unity of interest.

A dissolution of partnership has no effect upon the firm property. The joint agency of the partners ceases; they may simply bind each other as all joint debtors or joint creditors may.

8. By what means and to what extent may a retiring partner terminate his liability for the debts of the partnership so that such liability shall attach to no new obligations? How may he escape from his liabilities for existing obligations?

By giving notice in writing and by advertising the fact of his retirement to the creditors and the public generally he may limit his liability so that he may not be held responsible for any debts incurred by the firm subsequent to his retirement.

By agreement with any incoming partner or by agreement with the remaining partner or partners that they shall pay all firm debts for a consideration he may apparently escape liability for existing obligations, but in order to be binding as against creditors they (the creditors) would have to give their consent to the arrangement. So long as the liabilities were paid the creditors would make no objection; but should the new firm be unable to pay in full for any reason, then the retired partner could still be held, unless, as before said, the creditors had assented to the arrangement.

9. Distinguish between general and special agents. To what extent is the principal bound by the act of his agent? Must third parties, for their own protection, ascertain the agent's authority? Is the authority of a general agent unlimited? To what extent is the authority of an agent affected by usage or custom?

A general agent is one appointed to perform for his principal acts of a class; a special agent, specific acts.

The principal is bound by any act of his agent within the scope of his authority. If the agent exceeds his authority, but the act be such as is customary for a general agent to perform in that particular line of business, and third parties are acting in good faith, having no information as to the extent of the agent's authority, the principal will still be bound; for it will be generally supposed, in

the absence of specific instructions to the contrary, that the general agent possesses authority to perform all the acts customary for a general agent to perform in that particular line of business.

Third parties should, in the case of special agents, always ascertain the precise extent of the agent's power; because he cannot bind his principal by any act outside of his specified authority. In the case of general agents it would always be wise for third parties to ascertain the agent's authority.

The authority of a general agent is limited (*a*) by the authority conferred on him by his principal, and (*b*) by usage and custom.

It is always supposed that a general agent possesses all the authority to perform those acts which it is the custom and usage for a general agent in any particular line of business to possess.

10. In taking the accounts of a firm, state the principles which determine whether a given expense or loss is to be placed to the debit of the firm or to the debit of one or more of the partners separately.

If the expense or loss be incurred through breach of duty of a party, by fraud, negligence, ignorance, or extravagance, whether by design or not, the expense or loss may be charged to that party; the partnership cannot legally be asked to contribute to it. For an honest mistake in judgment, however, unless it amounted to gross negligence or ignorance, a partner could not ordinarily be held personally liable by the partnership.

11. State the powers and interests of surviving partners in a business.

A partnership is dissolved upon the death of a partner, and the possession of firm property and its management for the purpose of winding up affairs is vested exclusively in the surviving partners, who are said to be tenants in common with the representatives of the deceased partner as to the firm effects, but not as to possession. The surviving partners are trustees for the representatives of the deceased, for firm creditors, and for themselves.

It is their duty to settle up matters without unnecessary delay in the best manner for all interested. They are held strictly to account for their transactions by courts of equity.

12. State the rule of interest applicable where partial payments are made.

In the absence of any express agreement the rule is, first, apply the payments to the discharge of accrued interest; the balance, if any, to the account of the principal. The principal is never increased by the addition to it of unpaid balances of interest.

13. What property may a corporation receive in payment for its shares of stock?

A corporation may receive in payment for its shares of stock, money, labor, or property actually received for its use and lawful purposes authorized by its certificate of incorporation or required for its use.

In the absence of fraud in the transaction the judgment

of the directors as to the value of the property purchased is conclusive.

14. Are stock dividends which represent the accumulated earnings or profits of a corporation, income or capital in this state as between life-tenant and remainderman? Explain.

If earned or accrued before the life estate arose, without reference to the time when declared or made payable, they are held to be principal and to belong to the body of the estate. But if it is found that the fund out of which the dividend was paid accrued or was earned after the life estate arose, then it is held that the dividend is income and belongs to the tenant for life.

15. As between life-tenant and remainderman, is a dividend declared but not paid during the lifetime of a testator to be treated as capital or income? Give reasons.

Such a dividend belongs to the body of the estate as capital. It was a chose in action at the time of testator's death just as much as an account or note receivable.

Again, when a dividend is declared, it becomes separate from the other corporation assets, and is set aside for the use of stockholders of record.

January 1900.

I. Give illustrations of the following kinds of indorsement of a promissory note: In blank, special, restrictive, protest waived, qualified. Explain the legal effect of each.

When the payee endorses by simply writing his name across the back of a note it is called a *blank indorsement*. It is transferrable by mere delivery the same as if made payable to bearer.

Blank Indorsement.

"FRED'K S. TIPSON."

Supposing the note is payable to me a *special* indorsement would be "Pay to John Brown or order Fred'k S. Tipson."

A restrictive indorsement might take one of three forms:

(1) "Pay to John Brown only—Fred'k S. Tipson." X

(2) "Pay to John Brown for collection—Fred'k S. Tipson."

(3) "Pay to John Brown for the account of William Smith.—Fred'k S. Tipson."

It will be noticed that in each case the indorsement restricts the full and free negotiation of the paper thereafter.

Where "*protest waived*" is inserted all indorsers are bound by the agreement to surrender their right to prompt notice of non-payment.

A *qualified indorsement* usually consists in adding "without recourse" to the signature of the indorser. Such

indorsement does not affect the further negotiation of the paper, but it does relieve the indorser from all liability to pay the paper if prior parties do not.

2. Will the devise or assignment of all the rights, etc., of a partner make the legatee or assignee a partner? Explain.

It will not. Partnership results from an *agreement* between two or more parties, and no legatee or assignee can become a partner without the consent and agreement of the remaining partner or partners.

3. Can a partner buy a debt against his firm? Explain.

Not usually, as it would result in the establishment of inconsistent relationships. Again, supposing he had to sue for the debt, as partners are only recognized as individuals in law, he would have to sue himself as a member of the firm!

4. In what way does a deed become operative?

A deed becomes operative by execution and delivery.

5. State when the statute of limitations begins to run (a) on a note payable on demand, (b) on a note payable on a day certain or at a particular period after date, (c) on goods sold and delivered without any agreement as to credit, (d) on mutual accounts.

(a) The date of the note.

(b) From the due date.

(c) From the date of the bill.

(d) From the date of the latest entry on either side of either account.

6. By whom must a certificate of incorporation of a stock company be executed? State the minimum number of incorporators required. What is the limitation as to number of directors? May corporations, copartnerships, minors and persons acting in a representative capacity be incorporators?

It must be executed by the incorporators.

The minimum number is three. There is no limitation as to the number of directors, but the minimum is three.

They may not; incorporators must be "natural persons of full age."

7. Has a special partner prior right over other partners in distribution of capital surplus on the winding up of the firm? Are his rights subordinate to those of all other creditors? Why?

He has no inherent right in such distribution, but he may make such an agreement with the general partners as to the distribution of capital surplus in the event of a wind-up.

His rights are subordinate to those of all other creditors because he is liable to them for the full amount of capital contributed by him. He is not entitled to anything until the creditors are paid in full.

8. To whom does the right of stoppage in transit belong? Under what circumstances may this right be exercised? When does the right of stoppage cease?

The right of stoppage belongs to the vendor. Insolvency of the buyer and all or a portion of the purchase price unpaid would be sufficient grounds for exercising the right.

On payment of the purchase price or on delivery.

9. Within what period must an action be brought in the case of (a) instruments under seal, (b) written contracts not under seal, (c) unwritten contracts, (d) personal injury resulting from negligence?

(a) Twenty years.

(b) Six years.

(c) Six years.

(d) Two years.

10. How is an agent's authority derived from his principal? Where the acts to be performed by the agent could not be performed by the principal except by an instrument under seal, what is required?

An agent's authority is desired from his principal by appointment by letter, orally, or by power of attorney under seal.

An agent *must* be appointed by power of attorney under seal where his acts could only be performed under seal by his principal.

11. On the death of a partner, what right have his representatives to the firm property?

His representatives have no right to the firm property, nor can they interfere in the management of firm affairs.

They have not even the right to examine the partnership books to ascertain the interest of the deceased unless by special order of court. It is the duty of the surviving partners to wind up partnership matters and to account to deceased's representatives, paying to them the amount realized for his interest. If dissatisfied, deceased's representatives may demand a formal accounting under a court order.

12. What constitutes an insurable interest in property?

Such an interest as would suffer by damage happening to or destruction of the property.

13. On the dissolution of a corporation in whom does the title to the corporate property vest? To whom is such title-holder responsible?

The title vests in the trustees, i. e., the directors, unless other persons shall be appointed by the legislature or by some court of competent jurisdiction.

They are responsible to the creditors and stockholders.

14. When a partial payment is made, is it applied in the first instance to the discharge of the accrued interest or of the principal? If the payment is less than the accrued interest, how is subsequent interest computed?

It is applied in the first instance to the discharge of the accrued interest. On the balance of principal on which accrued interest was not paid. The principal is never increased by adding to it any unpaid balance of interest as a basis of further interest.

15. What is the meaning of the term *escrow* when applied to deeds? When does a deed in escrow take effect?

Where a deed is given by the maker (the obligor) to a third party to be delivered to the obligee upon the fulfillment of certain conditions or the happening of a certain event, the deed while so held is said to be *in escrow*, that is, it is a mere scroll or writing and not a contract obligation.

A deed in escrow takes effect after delivery to the obligee from the date of its delivery by the maker (the obligor) to the third party.

June 1900.

1. State the general rule governing the interpretation of contracts. Mention any exception to this rule.

The mutual assent of the parties to the *terms* of a contract is what contracts derive their force from. The interpretation of the contract, then, is governed by the *intention* of the parties at the time they entered into the agreement. The parties must have assented to the *same thing* in the *same sense* or there is no contract.

Where either party's acts is inconsistent with his alleged expressed intention in the contract, his intentions at the time will be interpreted by his *acts* instead of his words.

2. Describe the acts necessary to fix the responsibility of the drawer and indorsers of negotiable paper and mention the omissions which will operate to discharge the drawer or indorsers.

To fix their responsibility the instrument must be in writing, must be signed, payable in money on or before a fixed time, and delivered.

They are discharged from liability if presentation for payment be not made when due. Forgery invalidates the instrument entirely. Endorsers are discharged if they do not receive prompt notice of non-payment, as also, if an extension of time is granted to the maker.

3. Does a judgment when docketed have preference over an existing unrecorded mortgage? State the principle of law involved.

It does.

Between mortgagor and mortgagee a mortgage is perfectly valid though unrecorded. But for the protection of third parties the law declares that mortgages must be recorded. The judgment would have the preference here, because the requirements of the law as to recording have not been complied with.

4. State the essential feature of a partnership. Must each partner have an interest in both profits and losses?

The essential feature of a partnership is the agreement to share the profits in a certain proportion.

The partners may make any agreement they like amongst themselves as to the sharing of profits and losses. They *must* share profits; but it may be that one or more partners may be held exempt from sharing in the losses. But no such agreement will prevent such a partner from being liable for the debts of the partnership, unless the creditor knew of this agreement between the partners when the debt was contracted.

5. What law governs as to questions arising under a will disposing of personalty and realty in various different States?

As to personalty, the law of the State in which the person resided will govern; as to realty, the law of the State in which the property is situated.

6. Where a valid debt exists for a certain sum of money does a receipt for a less sum specifying that it is "in full of the debt" or "of all demands" debar the creditor from collecting the amount unpaid? Explain.

It does not. The agreement to accept less than the full amount of a valid debt is a new contract and would be voidable for want of consideration. The debtor should give something of value as a consideration for the release of the balance of the debt, or, preferably, get a release under seal, which is said to "import" a consideration.

7. A and B are partners. Can B, on the death of A, sell the firm property and give good title thereto? Explain.

He can.

B, on the death of A, becomes tenant in common of the firm property with A's representatives, and trustee for himself, the firm creditors and A's representatives. It is his business to wind up the firm affairs, realize on the assets, and liquidate the liabilities. He is entitled, therefore, to sell the firm property, but must account to A's representatives for the proceeds and obtain the sanction of a court of equity.

8. When does the title pass to the purchaser (*a*) under a contract of sale; (*b*) when goods are manufactured on order? Mention *two* of the grounds on which a contract of sale may be voided.

(*a*) On delivery, actual or constructive.

(*b*) When the goods are manufactured, set aside from general stock, and invoiced to the purchaser.

A contract of sale may be voided by fraud or breach of warranty.

9. May an agent be orally empowered to make a written contract for the sale of land or to convey the land after sale? Explain.

He may not. Such contracts would have to be in writing and under seal; and an agent cannot legally execute a contract under seal unless he himself is so appointed.

10. Define *dower*. When does the right of dower accrue? Is this right affected by any assignment made by the husband?

An estate in dower is the right which a wife has to the use for life of *one-third* of all the real estate of which her husband was possessed of an estate of inheritance at any time during marriage.

The right accrues on the death of the husband.

It is not.

11. What is the nature of the interest of each partner in partnership property? Has a partner an exclusive right to any part of such property? In what way can a partner's interest be ascertained and made available?

They are co-trustees and tenants in common.

He has not.

By an accounting; realization and liquidation of the firm's assets and liabilities; and pro-rata division of surplus amongst the partners.

12. May a corporation buy its own stock? Explain fully.

Not ordinarily, for the effect would be to virtually reduce the amount of the capital. But the stock may be received in payment of a debt due the corporation by a stockholder; it may be received as a gift; and it may be purchased out of its surplus. But such stock could not be voted on.

13. Explain the distinction between surcharging an account and falsifying an account.

To "surcharge" is to prove the *omission* of an item from an account which is before the court as complete (an account stated) which should be inserted to the credit of the party surcharging. Leave to surcharge and falsify is granted in preference to opening an account (in case of an account stated by the parties), or reported by an auditor, where the party obtaining the liberty would be excluded by the account were it not granted.

To "falsify" is to prove that an item in an account before the court as complete, which is inserted to the debit of the party falsifying, should have been omitted. When a bill to open an account has been filed, the plaintiff is sometimes allowed to surcharge (i. e., add an additional item of charge) and falsify (i. e., eliminate an item charged) such account. If anything has been wrongly charged he is at liberty to show it, and that is a falsification.

14. Is it necessary that a guaranty for the debt or default of another be in writing and express the consideration in order to hold the guarantor? Is notice of non-payment necessary to charge the guarantor of the payment of a promissory note?

The guarantee must be in writing. If made at the same time as the principal contract the original consideration will also support the guarantee; but if made subsequently to it, the consideration must be expressed.

It is necessary to notify the guarantee of non-payment; but failure to do so promptly will not relieve the guarantor from payment.

15. When does a proxy, executed by a member of a corporation without specifying the time it is to continue in force, become invalid? Must a proxy holder be necessarily a stock-holder? Have inspectors of election power to determine the genuineness of proxies?

After eleven months.

X No; but no officer, clerk, teller, or bookkeeper of a corporation formed under or subject to the banking law may act as proxy for any stockholder at any meeting of any such corporation.

No. If they are apparently the acts of the stockholders, and regular upon their face, that ends the matter so far as the inspectors are concerned.

January 1901.

1. What is essential to the proper execution of a deed conveying land? What attestation is required? When does the record of a deed take effect? How does a warranty deed differ from a quit claim deed?

It must be signed, sealed, acknowledged, delivered and recorded.

The attestation of one witness.

The moment it is handed to the recording officer.

A quit claim deed simply releases all right, title and interest of the grantor, while a warranty deed in addition carries a guaranty of title. The liability upon the latter covenant only arises upon actual and rightful dispossession of the grantee by one having a better title.

2. Where a delivery only is necessary to complete a contract of sale, can the buyer, by refusing to receive the property, throw the risk of injury or loss on the seller? What remedy or remedies has the seller? Explain.

He cannot.

He may retain possession of the goods, and after giving notice to the buyer he may sell them in the usual way and recover from the buyer any loss which may happen upon the resale.

3. What books are stock corporations required by law to keep? What must the stock book show? Does a corporation incur a penalty by neglecting or refusing

to keep a stock book? If so, state the amount of the penalty. Who besides stockholders have the right to inspect and make extracts from the stock book?

Proper books of account of all its business transactions and a stock book.

It must contain the names of all the stockholders, alphabetically arranged, the number of shares held by each, place of residence, the date when they became owners of the stock, and the amount paid thereon.

It does.

Fifty dollars for every day it neglects to keep one.

Judgment creditors.

4. On the dissolution of a partnership, what is the mutual relation of the partners in respect to the partnership property and effects? To what extent does each partner continue to be the agent of all? May one partner maintain an action at law against another for what may be properly due him on partnership account? Explain.

They are joint tenants and trustees for themselves and firm creditors.

Each partner continues to be the agent of all in settling up firm affairs, collecting debts and discharging liabilities.

Only until an accounting, and the partnership balances adjusted, either by voluntary agreement or the judgment of a court.

5. If, on the dissolution of a partnership by the death of a partner, it happens that there is not sufficient property and effects to pay its obligations, what liability, if any, will attach to the estate of the deceased partner? State the rights of the deceased partner's individual creditors and next of kin in such case.

In such a case the deceased partner's personal estate may be held to pay firm debts; but personal creditors have preference over partnership creditors.

The individual creditors are paid in full first; then partnership creditors; the residue going to next of kin.

6. Is the corporate seal always necessary in order to bind a corporation? Can a foreign corporation avail itself of the statute of limitations of the state of New York in an action brought in the New York courts? Must a stockholder own stock for any particular length of time to enable him to issue a valid proxy to vote at any meeting of stockholders? Without any specified time being stated as to its continuance, how long will a proxy continue in force?

No.

It cannot.

Yes; at least ten days before such meeting.

Eleven months from the date of its execution.

7. What is (a) a release, (b) a mutual release? In what respect does a release differ from a receipt? Can a mutual release, given on the adjustment of old accounts, be disturbed? Explain.

(a) A release is a contract containing a relinquishment of some right or claim by some person in favor of another. Verbal contracts may be released by parol. Written contracts require a written release, and contracts under seal require the release to be under seal.

(b) A mutual release is a contract wherein each party agrees to release the other from all rights, claims, or demands existing between them.

The difference between a release and a receipt is this: The former is a contract and expresses consideration, while the latter is only a memorandum and is not *absolute proof* of payment, being open to rebuttal by parol evidence.

A mutual release given on the adjustment of old accounts could be disturbed if fraud could be proved or gross mistake shown.

8. What is usurious interest? Who may take advantage of the usury to escape liability on the debt? Can a corporation interpose the defense of usury? Can a contract, legal under the usury laws of the state where made, be enforced in a state where it would have been usurious?

Usurious interest is any rate in excess of that prescribed by law. The rate varies in different states. In New York it is six per cent. per annum.

The borrower or his representatives.

It cannot.

It can.

9. In a general partnership what rule will govern the apportionment of profits and losses when not mentioned in the agreement? If the partnership agreement merely provides for diversion of profits, how will losses, if any, be borne? In a case where one or two partners was to receive three-fourths of the profits, and there was no profit, how should the loss be divided? Does a partnership exist where the agreement does not expressly or by implication provide for community in the losses?

They will be divided equally.

They will be borne equally.

It should be divided equally.

No. Partnerships are formed to make profits and to share them in certain proportions.

Community in the losses would be *implied* from this agreement.

10. Within what time must a domestic stock corporation, or a foreign stock corporation doing business in this state, file its annual report? Is any exception made in the case of a stock corporation doing business without the United States? What must such annual report show? By whom must such report be signed, by whom verified by oath and in what offices must the same be filed? What penalty attaches for failure to file such report? Is it necessary to file such a report after the corporation has passed into the hands of a receiver?

During the month of January as of January 1st.

Yes; it must be filed before May 1st as of January 1st.

The report must show:

(1) The amount of its capital stock and the proportion actually issued.

(2) The amount of its debts or an amount which they do not exceed.

(3) The amount of its assets or an amount which its assets at least equal.

Such report shall be made by the president, or a vice-president, or the treasurer, or a secretary of the corporation. It need not be verified by oath. It need only be filed in the office of the Secretary of State. Fifty dollars a day is the penalty payable by any officer who fails to make and file the report within ten days after being requested to do so by a creditor or stockholder of the corporation.

It is not.

11. State briefly the requirements of the statute of frauds in respect to agreements which by their terms are not to be performed within one year from the making thereof and also in respect to promises to answer for the debt, default or miscarriage of another person.

Such agreements must be in writing, and to be valid as contracts the consideration must be expressed.

12. What should a bill of lading contain? By whom should it be signed? As between the ship-owner and the shipper, what is the character of the bill of lading in respect to the goods received? May it be contradicted? Does the same character exist as between a ship-owner and an assignee of the bill of lading for value? Explain. What is understood by "lay days," "demurrage"?

It should contain the name of the consignor, the consignee, the master, the place of departure, the destination, the rate of freight, primage and other charges, things shipped, with marks and number of same.

It should be signed by the master.

It is a simple receipt.

It may.

No; it becomes a contract and cannot be contradicted.

"Lay-days" are the number of days after the arrival of the ship at her port in which she may receive or deliver cargo.

By "demurrage" is meant compensation for any delay beyond the stipulated lay-days.

13. What is the legal relation between a broker and his principal, where the broker is employed to purchase stock and hold it for his principal on a deposit being made with him of a part of the price? Explain.

The legal relationship is that of pledgor and pledgee. The broker takes his principal's "margin" and loans the balance requisite to purchase the stock, which he holds as security for his advance. In other words, the stock is "pledged" with him.

14. Compare co-ownership and partnership, and state *four* important grounds on which they differ.

CO-OWNERSHIP.

Not *necessarily* the result of agreement.

Does not necessitate a community of profits and losses.

Either owner can transfer his interest so as to put another person in the same position as regards others as he himself occupies. +

Co-owners are not co-agents.

PARTNERSHIP.

Is the result, *necessarily*, of agreement.

Necessitates a community of profits and losses.

The assignment of a partner's interests effect an immediate dissolution of the partnership.

Partners are co-agents.

15. Should the proceeds arising from a mortgage, lease or sale of real property under a surrogate's order for the payment of debts and funeral expenses be included by an executor in his account of proceedings? Explain.

No; but they must be paid into the surrogate's court by the executor, and for that purpose he should pay them to the county treasurer to the credit of the special proceeding, to be distributed subject to the direction of the surrogate's court.

June 1901.

1. What does the term certificate of incorporation include? By whom must a certificate of incorporation be executed? State the requirements for filing and recording such a certificate. May a corporation exercise any corporate privileges before paying the organization tax and fees for filing?

The certificate of incorporation includes:

- (1) The name of the proposed corporation.
- (2) The purpose or purposes for which it is to be formed.
- (3) The amount of the capital stock, and if any portion thereof be preferred stock, the preferences thereof.
- (4) The number of shares of which the capital stock shall consist (each of which shall not be less than five nor more than one hundred dollars), and the amount of capital (not less than five hundred dollars), with which the said corporation will begin business.
- (5) The city, village or town in which its principal business is to be located.
- (6) Its duration.
- (7) The number of its directors (not less than three).
- (8) The names and post-office addresses of the directors for the first year.
- (9) The names and post-office addresses of the subscribers of the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

It must be executed by the incorporators. Prior to filing and recording the organization tax of one-twentieth of one per cent. upon the authorized capital stock of the corporation must be paid to the State Treasurer; ten dollars for filing and fifteen cents per folio for recording to the Secretary of State.

It may not.

2. State briefly what matters should be specified by articles of copartnership. In the absence of any agreement, how are losses and gains to be shared? How are firm assets to be applied when there are both individual creditors and creditors of the firm?

The names of the partners should be stated and the date of the commencement and the duration of the partnership inserted. The amount of capital to be contributed by each should be specified, the maximum amount to be withdrawn by each, and the proportion in which profits and losses are to be divided.

Equally.

Firm creditors come first; then individual creditors.

3. Does the admission of a new member terminate the former partnership and create a new one in law? Is it the same in practice? Is a new partner necessarily liable to creditors of the old firm by any contract which he may make with the members of the old firm to assume the old debts and be liable for them the same as the other members. Explain in each case.

It does, because a new contract is necessary.

It is not.

He is if the creditors are cognizant of and assent to the agreement and the retiring partner is relieved from lia-

bility; but if they are not party to the agreement, the retiring partner can still be held if the new partner fails to pay.

4. What is negotiable paper? What are the essentials which give to such contracts their peculiar privileges? Give the names of the most common kinds of negotiable paper. What words are required to give negotiability?

By negotiable paper is meant written evidence of debt which may be transferred by indorsement or delivery, giving the holder the full right to sue and collect it.

(1) The fact that in the hands of an honest purchaser the paper can be collected, whether it was binding in the hands of the original holder or not.

(2) The fact that it is payable absolutely in money at a designated time.

There are three general kinds of negotiable paper: Promissory notes, bills of exchange or drafts, and checks.

"Pay to A B or order," or "Pay to the order of A B," or "Pay to A B or bearer," or "Pay to bearer."

5. State briefly the duty of the executor of a deceased partner, as to the continuance of the business in which the testator was engaged.

If the testator's will so directs and the surviving partners assent, the executor may become a partner and continue the business; if not, he has nothing to do with the continuance of the business. His duty is to ascertain the amount of the testator's interest as soon as possible from surviving partners, and collect the amount due him for same.

6. In respect to ownership of property what is understood by (a) joint tenancy, (b) tenancy in common, (c) tenancy in severalty? What peculiarity attaches to a joint tenancy that does not exist in a tenancy in common? On the death of a tenant in common to whom does his share pass?

Joint tenancy is the estate which subsists between several persons in any subject of property by purchase or grant; never by inheritance.

Tenancy in common may exist from grant, purchase or inheritance.

When real property is conveyed or transferred by deed or will to one person, he is said to be a tenant in severalty.

The peculiarity attaching to a joint tenancy that does not exist in a tenancy in common is "the right of survivorship": that is, upon the death of one of the tenants his share and interest pass to the surviving tenant or tenants. On the death of a tenant in common his share passes to his heirs. It is also to be noted that dower attached to the interest of a tenant in common, but not to that of a joint tenancy.

7. Where a mortgage of goods and chattels is given unaccompanied by an actual change of possession of the property mortgaged, what is necessary to give it validity as against creditors of the mortgagor or as against subsequent purchasers and mortgages in good faith? When does such a mortgage cease to be valid as against creditors of the person making the same? What steps are necessary to give it new life and validity?

It should be recorded.

After one year.

It must be re-recorded.

8 What constitutes agency? How is the authority of an agent acquired? Distinguish between general agents and special agents. Is the authority of a general agent unlimited? To what extent is the principal bound by the acts of his agent? Mention *three* classes of agents.

Agency is the employment of one person (the agent) by another (the principal) to do some act or acts for his benefit or account.

The authority of an agent is acquired from his principal by appointment by letter, orally, or in writing under seal.

A general agent is one appointed to do acts of a class, while a special agent is appointed to perform specific acts.

No; it is limited by the terms of his contract with his principal and the usages and customs of a general agent in that particular line of business.

He is bound by all acts authorized by contract and by all that are customarily performed by a general agent in his particular line of business.

Factors, brokers, attorneys in fact and at law.

9. What remedies has the pledgee of shares of stock as collateral security for a debt which is overdue and unpaid?

He may sell the collateral and recoup himself. If proceeds of sale are insufficient, he can maintain an action at law for the balance.

10. Define real property, personal property. What is understood by (a) things in possession, (b) choses in action? To what class do accounts, promissory notes and all forms of indebtedness belong?

Real property may be defined as that kind of property the ownership in which at death will by law become vested in one's heirs and not in one's personal representative, i. e., administrator or executor. Personal property is all other.

By (a) things in possession is meant any property of which one has actual possession. By (b) choses in action is meant any claims upon which an action at law may be maintained.

Accounts, promissory notes, and all forms of indebtedness belong to choses in action.

11. What is understood by the expression intermediate account? When may an executor or administrator voluntarily file in the surrogate's court an intermediate account? What is a compulsory intermediate account? When is an account said to be judicially settled?

It is an account rendered by an executor intended to disclose the condition of an estate at any time prior to the final accounting. It is not made the subject of judicial settlement.

At any time.

A compulsory intermediate account is one made by order of the surrogate upon application of certain parties on the happening of certain events.

An account is said to be judicially settled when a decree has issued from the surrogate's court signifying that the account as rendered is made conclusive upon the parties in interest.

12. Where a fund is directed to be invested and the interest, dividends and income applied to the use of the beneficiary for life, does a profit realized on the sale of

stock in which a portion of such fund is invested belong to the life tenant as income or to the body of the estate? State the general rules of law which govern.

To the Principal (4 Tucker, 180).

"The outlook of all the cases seems to be that disregarding forms the court will treat anything in the nature of a premium, that is to say an appreciation in the value of the capital, as capital, and anything that is interest, income or proceeds, no matter how extraordinary or unusual it may be, as belonging to the life tenant" (5 Redf. 121).

13. What is understood by the term good will of a business? Is the good will of a business a recognized asset? Explain. How is good will generally valued?

By good will is meant the capitalized value of the net earnings of a business for a term of years based upon the assumption that the old customers will resort to the old place.

It is; because in addition to the value of the actual capital (i. e., the excess of assets over liabilities in a business) there is to be taken into consideration the earning capacity of an undertaking. Where profits are large this is a very valuable asset.

Good will is generally valued by taking the average net earnings of a business for a term of years and taking from three to ten years of this amount as its worth.

14. State the rule of law as to time of maturity of negotiable instruments. Mention any exception to the general rule.

All negotiable instruments must mature on a certain date, or on a stated day after a given date.

Notes payable on demand are an apparent exception, but the date can be made certain by making demand.

15. What is understood by submission to arbitration? What may be submitted for arbitration? In what manner may the submission to arbitration be made? Generally, can a member of a partnership by a submission bind his partners to an award made in pursuance to it? Explain.

An agreement to submit a disputed claim to the judgment of a third party, and to be bound by his decision.

Any matter in ~~which~~ dispute which the parties at variance consent to refer to the judgment of a third party.

The parties at variance agree upon a third party to act as arbitrator, or each selects some one to represent himself on the understanding that they (the parties selected) are to choose and decide on another party to act as arbitrator. The matter to be arbitrated is reduced to writing and a contract drawn up wherein each disputant agrees to be bound by the arbitrator's decision.

He can ; because the award having been given and submission being compulsory, he has power as an agent to bind his partners. *

January 1902.

1. What is required of a corporation as to (a) number of incorporators, (b) number of directors, (c) capital to be paid in, (d) books to be kept? Define subscriber, incorporator, stockholder.

(a) Not less than three.

(b) Not less than three.

(c) Not less than five hundred dollars to start, and fifty per cent. of the whole capital stock must be paid in within one year.

(d) Proper books of account, and a stock-book.

Subscriber: One who agrees to take and pay for a certain number of shares.

Incorporator: One who as such signs the articles of incorporation.

Stockholder: One who own a certain number of shares and whose name appears in the stockbook.

2. What is meant by accommodation paper? What are the rights and liabilities of parties to accommodation paper?

Accommodation paper is so called because one party accommodates the other with the loan of his credit. Suppose that B is short of funds and of credit at the bank. He goes to his friend A, who is also short of funds but long of credit at the bank, and asks him for his promissory note for the sum he needs, payable at the time when

he thinks he will be able to pay the note. A makes out the note payable to B. B takes the note to the bank and discounts it. B cannot collect direct from A because there was no consideration; but if B fails to pay, the bank can make A do so.

In the above case if B does not pay A is liable. If A pays on B's default he can sue B for the amount.

3. State the rule of law as to what shall be deemed fixtures, (a) as between the seller and the buyer of real estate, (b) as between the landlord and tenant.

(a) "Whatever is applied to the soil belongs to the soil." A building with all its appurtenances is a fixture. The rule is that a sale of real estate carries with it all fixtures unless they are expressly reserved by the vendor.

(b) A tenant may remove things that he has annexed to land or buildings unless the same are built or fixed into the wall of a building so as to be essential to its support. The rule is that a tenant may remove any fixtures he has put in provided the premises are not left in a worse condition than when he took possession. He must remove them before his tenancy expires, or he will be held to have waived his right.

4. May one partner without the knowledge of his copartners make a general assignment of partnership property for benefit of creditors? Explain fully.

He may not. He may assign his own interest, which would work a dissolution of the partnership. As to the firm property, he is a co-trustee and tenant in common, and joint action is necessary to make a general assignment.

5. In case of an agreement to prosecute a business and divide the profits (no mention of losses being made) would a partnership exist? How would the losses, if any, be borne? In case A promises to give B as compensation for services a portion of the profits of his business, without liability on B's part for losses, is there a partnership? Explain.

It would. Partnership results from an agreement to share profits. This implies sharing of losses also.

In this case the losses would be borne equally.

No; B shares not as a partner who contributes to the capital, but in lieu of salary for services rendered.

6. May the board of directors of a certain corporation delegate its authority to agents or to a quorum composed of less than a majority of its members? May a director vote by proxy at a meeting of the board of directors? Is a director or stockholder of a corporation chargeable with actual knowledge of its business merely because he is a director or stockholder? Give reasons in each case.

Yes.

He may not.

A director is so chargeable, because he is really a trustee for the stockholders and is entrusted by them with the business management of the corporation. A stockholder as such is not so chargeable, because he has no voice in the management of affairs.

7. What is understood by the acknowledgment to a deed? State the object of such acknowledgment. Is it an essential part of the instrument? Is the recording of a deed not properly acknowledged good against creditors and subsequent purchasers without notice?

A statement made to a proper officer by the parties whose names are signed to the deed, and written by the officers on the deed, that they voluntarily signed the instrument.

To enable the deed to be recorded.

It is not.

No.

8. An estate with a life tenancy consists in part of shares in a certain corporation that has voted to increase its capital stock. Would the proceeds of a sale of the right to subscribe for the estate's quota of this new issue go to the life tenant or to the body of the estate? Explain.

Options or privileges given to subscribe for stock and bonds should inure to the benefit of the remainder man and go as principal. The right to subscribe belonged to the Trust Estate, and accrued upon condition that the Estate chose to pay for or purchase the bonds or stock. If the option is accepted the purchase operates to increase the capital or change its manner of investment.

9. What is a bond? What does the ordinary bond used in business acknowledge? What is the sum specified in the obligatory clause of the bond called? Is it regarded as the measure of damage which may be collected on a default in the condition? Explain.

A bond is an obligation in writing, under seal, which may be either single, as where the obligor binds or obliges himself, his heirs, executors and administrators to pay a certain sum of money to another on a day named; or conditional, that is if the obligor does some particular act,

the obligation shall be void, or else remain in full force and effect.

That one party obliges himself to pay to another a certain sum of money on certain expressed conditions.

It is called the principal.

It is not; the penalty is twice the sum of the principal, and that is usually the measure of the damage, which may include interest, costs, etc.

10. In what manner should a mortgage of real estate be executed? What certificate should be affixed to a mortgage to show that it has been properly executed and recorded?

A mortgage on real estate is customarily given as collateral security for the payment of a bond. It is in form a conveyance or deed of real estate *upon condition*, to become void (the defeasance clause) upon performance of the condition, and to become absolute upon default in performance of the condition.

To be valid it must conform to the statute of frauds, and it must be signed, sealed, executed with all the formality of deeds, and must be delivered. It should also be properly acknowledged and recorded.

The certificate of the record clerk of the register of deeds.

11. State the rule (in the absence of any special stipulation) for computing interest on a contract where payments have been made from time to time.

The question is indefinite. In order to answer it intelligently the specific terms of some contract should be cited.

The rule is first to apply the payments to the discharge of the accrued interest. When the payments exceed the accrued interest then after applying sufficient to discharge it, to apply the balance as a payment upon the principal. In other words, the old United States rule of partial payments covers in such cases.

12. After the dissolution of the firm of A and B, B conveys by indorsement to C a note held by the firm. What rights has C against the firm?

Having given proper notice to B of the non-payment of the note, he can sue A and B severally for the amount due, as notice to any one partner is notice to the firm even though there has been a dissolution.

13. Explain the nature and effect of an account stated. May one recover on an account stated on proof of the admission of a general balance, without proving the items of the account? When does the right of action for the balance arise?

An account stated is an agreed balance of accounts which has been examined and accepted by the parties to it. It is in the nature of a new promise, and is conclusive as to the liability of the parties with reference to the transactions included in it, except in cases of fraud or manifest error.

Yes. It is not usually necessary to prove the items of the account.

(1) Within a reasonable time of the rendering of the account and its correctness being assumed by implication, i. e., the silence of the party to whom rendered. (2) From

the date of the actual acknowledgment of the correctness of the amount of the balance shown in the account.

14. What is understood by carrier's lien? When is freight considered as earned by a carrier? State the remedy of the carrier in case freight is not paid when earned. Does the carrier waive his right of lien by delivery of goods to the consignee before payment of freight? On what conditions only may a lien be retained?

The right to retain possession of goods as security for freight charges thereon.

When the goods have been transported to their destination and the consignee notified of same.

The remedy is, after proper notice and the expiration of a certain period of time, for the carrier to sell the goods at public auction and apply the proceeds to the payment of the freight, storage charges, and the expenses of the sale.

He does.

The retention of the goods.

15. May a person enter into a contract under any name he may choose to assume? Explain.

He may, provided his identity is not concealed, and provided the name is not used with intent to defraud.

A person may ordinarily trade under any name he chooses, provided he registers same together with his real name as provided for by law.

June 1902.

1. As against the maker of a promissory note payable on demand with interest, when does the statute of limitations begin to run? What is the object of this statute?

From the date of the note, or if interest is paid from time to time, from the date of the last payment. The object of the statute of limitations is to compel people to collect their debts or commence action at law for the recovery of same within a reasonable time of their incurrance. The older a claim gets the more difficult is it to get evidence to support it and to defend against it. The possibility of the introduction of fraudulent claims and of fraudulent defences is by this statute greatly reduced.

2. Is one who is a depositing and check-drawing customer of a bank under obligation to verify the correctness of the balance shown by his passbook and returned vouchers? Explain.

He is; for if owing to his neglect to do this it should happen that his signature had been forged to checks, and money obtained thereon from the bank separately, the bank would be relieved from liability, as the common carrier would be held guilty of contributory negligence. The customer would be "estopped" because of his negligence.

3. What is meant by the capital of a partnership? Is the capital the same as its actual assets? Is the capital of each partner necessarily the amount due to him from the firm? Explain.

By capital is primarily meant the amount of money, or the value of the goods, or skill invested in a concern by the partners. But it must be borne in mind that capital is of fluctuating value, increasing or diminishing in worth from day to day according as profits or losses are made.

It is not; it is the *excess* value of the assets over the liabilities of a business.

It is not; because, as before stated, where profits and losses are adjusted, the capital of each partner may be greater or less than the amount shown before the books are "closed." Again, even after the books are "closed" the capital of partners shown in the balance sheet is not necessarily the amount due to them, because in the event of a dissolution of the partnership from any cause the assets would first have to be realized and all outside indebtedness liquidated, and only the residue would be due partners. Assets have a curious habit of diminishing in value in the process of realization, while there are necessary expenses attending same. Liabilities, on the other hand, are awkwardly obstinate in the persistent manner in which they refuse to be got rid of at less than full value.

4. Define profits. In ascertaining the net profit of a business, is it right to deduct interest on capital employed? Under ordinary circumstances, should gains be treated as profits of the year in which they are earned or the year in which they are received?

Profits are the net earnings of a business available for distribution in the form of dividends, if a corporation; or for capital accretion if an ordinary firm.

It is entirely a matter of agreement.

Gains should be treated as profits of the year in which they were earned.

5. What is the effect of a judgment recovered against a person prior to his filing a petition in voluntary bankruptcy, in case he is adjudged a bankrupt?

If recovered at any time within four months prior to his filing a petition, the judgment will be dissolved if proved that he was insolvent and that its enforcement would work a preference.

6. If A contributes one-third and B two-thirds of the capital of a partnership, and nothing is said as to how the profits shall be divided, what proportion should go to each?

One half.

7. Has an executor a right ex officio to examine the books of a partnership in order to ascertain his testator's interest therein? Within what period can an executor compel surviving partners to pay the interest of his testator?

No; but he may examine the partners to ascertain testator's interest, and if dissatisfied he may obtain an order for an accounting from a court of equity which would confer on him the right to examine the partnership books.

There is no stated period; a "reasonable" time is usu-

ally allowed. If dissatisfied the testator may cite the partner to show cause why the testator's interest should not be paid.

8. State the method of taking a partnership accounting under a decree for an accounting between or among partners.

The articles of co-partnership should first be carefully examined to ascertain the amount of capital to be contributed by each and the proportion of profits the partners severally are entitled to. The accountant should then examine the book of accounts and satisfy himself that these provisions have been complied with. Next he should make a careful and exhaustive audit of the cash receipts and expenditures, and examine the books to see that the profits stated are correct. Finally he should make up a balance sheet in the form of a "statement of affairs," showing the amount due each partner.

9. Has the treasurer of a corporation, as such officer, any authority to bind the corporation by a contract for work, labor and services? Can the stockholders of a business corporation lawfully authorize a transfer of its entire property to another corporation in exchange for the stock of the latter? Explain.

Not unless he is so authorized by the by-laws. But the general rule is that an agreement made by an officer or agent of a corporation who assumes to act in its behalf can be enforced against the corporation when it has received the benefit of the agreement.

Yes; under a consolidation agreement assented to by at least two-thirds of the stockholders.

10. From whom must the application for a voluntary dissolution of a corporation proceed? Under what conditions may such application be made? To whom should such petition be presented?

From the stockholders.

If the directors by majority vote of the whole board adopt a resolution that it is in their opinion advisable to dissolve the corporation, and the stockholders after proper notice and at a meeting properly called signify their written consent to same (the holders of two-thirds in amount of the stock of the corporation), then the corporation shall file such consent, attested by its secretary or treasurer and its president or vice-president, together with the names and addresses of the directors and officers.

The petition should be presented to the Secretary of State.

11. A debtor sends a check to his creditor, stating it to be in full payment of his account to date, and the creditor retains and uses the check but declines to regard it as full payment; whereupon the debtor demands that it be accepted as such payment or that it or its avails be returned at once. The creditor neglects to return the check or its proceeds but repeats his demand for a balance alleged to be still due. Is there an accord and satisfaction? Give reasons for your answer.

No. An accord and satisfaction is a compromise settlement of a disputed claim. It must be the result of an agreement. Here there is none, as the creditor does not agree to accept less than the amount he originally claimed.

He would be justified in using the avails of the check on which he would have a lien.

12. Does a dividend on stock, declared before a testator's death, but not payable till after his death, become a part of his estate or does it belong to the life tenant as income?

It becomes a part of his estate, as immediately a dividend is declared the amount of same is set aside from the general assets of the corporation and belongs to the stockholders of record.

13. What is a contract? What are the essentials of every contract? State the general rule as to who may contract. Distinguish between good consideration and valuable consideration. Will a good consideration support an executory contract?

A contract is agreement between two or more competent persons based upon consideration, to do or not to do some particular thing.

The essentials to every contract are: The contracting parties must be legally competent to contract; they must give their consent; there must be consideration, and there must be subject matter, i. e., something which they agree to do or not to do.

The general rule as to who may contract is that any person is competent to contract who has not been declared legally incompetent.

By good consideration is meant the natural love and affection existing between relatives.

A valuable consideration is an inducement of value, and may be a benefit to the promissor or a loss or inconvenience to the promisee.

It will not.

14. Is a local assessment for improvement apportionable between life-tenant and remainder-man? Explain.

It is generally ; but it depends largely on circumstances, such as the condition of the property, and whether the income arising from same would be increased thereby.

15. If a note is held by a bank at which it is payable and is not paid when due, must there be a presentment and demand of payment? Is the presentation of a matured draft to the drawer for payment sufficient notice to him of non-payment by the acceptor?

No presentment and demand of payment are necessary. The maker is bound to have funds there to meet it.

It is not ; evidence must be furnished the drawer that the draft has been *presented* for payment, and that payment has not been made. This evidence is the notice of protest by a notary public.

C. P. A. Law

STATE OF NEW YORK.

§ 1 Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, residing or having a place for the regular transaction of business in the state, being over the age of 21 years and of good moral character, and who shall have received from the regents of the University a certificate of his qualifications to practice as a public expert accountant as hereinafter provided, shall be styled and known as a certified public accountant; and no other person shall assume such title, or use the abbreviation C. P. A. or any other words, letters or figures, to indicate that the person using the same is such certified public accountant.

§ 2 The regents of the University shall make rules for the examination of persons applying for certificates under this act, and may appoint a board of three examiners for the purpose, which board shall, after the year 1897, be composed of certified public accountants. The regents shall charge for examination and certificate such fee as may be necessary to meet the actual expenses of such examinations, and they shall report annually their receipts and expenses under the provisions of this act to the state controller, and pay the balance of receipts over expenditures to the state treasurer. The regents may revoke any such certificate for sufficient cause after written notice to the holder thereof and a hearing thereon.

§ 3 The regents may, in their discretion, waive the examination of any person possessing the qualifications mentioned in § 1 who shall have been, for more than one year before the passage of this act, practicing in this state on his own account, as a public accountant, and who

shall apply in writing for such certificate within one year after the passage of this act.

§ 4 Any violation of this act shall be a misdemeanor.

§ 5 This act shall take effect immediately.

Notes on the law.

1 The use of the abbreviation C. P. A. or any other words, letters or figures to indicate that the person using the same is a certified public accountant is prohibited except to those holding regents certified public accountant certificates.

2 The three examiners are appointed to serve for one year. Since 1897 the board has been composed of certified public accountants.

3 Certificates will be revoked for cause.

C. P. A. Law

STATE OF ILLINOIS.

A Bill for an act to regulate the practice of Public Accounting; to establish a Board of Accountancy for the examination of Public Accountants; to provide for the granting of certificates to those who qualify under the provisions of this act, and to provide a penalty for any violations thereof.

§ 1 (1) *Be it enacted by the people of the State of Illinois represented in the General Assembly:* That within thirty days after the passage of this act, the Governor shall appoint, with the advice and consent of the Senate, a Board of Accountancy, to consist of three members to be selected in the manner hereinafter provided, for the examination of persons applying for certification and registration under this act, and for the performance of such other duties as may be hereinafter provided.

(2) That the members of the Board of Accountancy first appointed shall be selected by the Governor from the names of public accountants skilled in the practice of that profession, and actively engaged therein within the State of Illinois. One member of the said board shall hold office for the term of two years, one for the term of four years, and one for the term of six years from the first day of March next preceding such first appointment; and upon the expiration of each of said terms, and of each succeeding term, a member shall be appointed from holders of certificates under this act.

(3) In the event of a vacancy arising, the Governor shall appoint a successor for the unexpired term of the retiring member, from the holders of certificates issued under this act chosen as aforesaid.

§ 2 Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, having a place for the regular transaction of business as a professional accountant, within the State of Illinois, being over the age of 25 years, of good moral character, and who shall have received from the Board of Accountancy a certificate of his qualification to practice as a public accountant, as hereinafter provided, shall be styled and known as a *Certified Public Accountant*, and no other person shall assume such title, or use the abbreviation, 'C. P. A.," or any other words or letters to indicate that the person using the same is a certified public accountant.

§ 3 (1) The granting of certificates shall be based upon an examination in "Theory of Accounts," "Practical Accounting," "Auditing," and "Commercial Law" as affecting accountancy, and such examinations shall take place at Springfield or Chicago as often as may be necessary in the opinion of the Board of Accountancy; but not less frequently than once a year, and under such rules and regulations as may be adopted by the said Board.

(2) The time and place of holding the examination shall be duly advertised for not less than three consecutive days in one daily newspaper published in Springfield and one published in Chicago, not less than thirty days prior to the date of each examination, and by letter mailed not less than twenty days before such examination to each person who may have applied to any officer of said Board for information as to such examination.

§ 4 The Board of Accountancy may in its discretion under regulations provided by its rules, waive all or any part of the examination of any applicant possessing the qualifications mentioned in § 2, who shall have had five successive years' previous experience as a public accountant, who shall apply to the Board of Accountancy in writing within one year after the passage of this act, and who shall have been practicing in this State as a public accountant on his own account for a period of not less than one year next prior to the passage of this act; also of any person who shall have been actively in practice as a public

accountant for not less than five years next prior to the passage of this act, outside the State of Illinois, who shall have passed an examination equivalent, in the opinion of the Board, to the examination to be held under the provisions of this act.

§ 5 (1) The Board of Accountancy shall within thirty days after their appointment meet and organize by electing one of their number as president, and one of their number as secretary, and shall from time to time adopt such rules and regulations for their government as shall be necessary and not contrary to the provisions of this act.

(2) The Board of Accountancy shall transmit to the Secretary of State, all certificates granted by them, for registration in his office, and no such certificates shall be valid until they shall have been registered as herein provided, and such registration shall be attested on the face of such certificates under the name of the Secretary of State and Seal of the State of Illinois.

§ 6 (1) Each applicant for a certificate under the provisions of this act shall pay to the secretary of the Board of Accountancy at the time of filing an application, a fee of Twenty-five Dollars (\$25.00).

(2) Each successful applicant for a certificate shall pay to the secretary of the Board of Accountancy a fee of One Dollar (\$1.00), to be transmitted to the Secretary of State, for the registration of his certificate, as provided for by this act.

(3) Each holder of a certificate, issued under the provisions of this act, shall pay to the secretary of the Board of Accountancy on the first day of July of each year after 1903, a license fee of Ten Dollars (\$10.00) as shall be provided by the rules of the Board of Accountancy.

§ 7 (1) From the fees collected under Sec. 6, there shall be paid all the expenses incidental to the meetings and examinations held by the Board of Accountancy, and the issuance of certificates and also the traveling expenses of the members of the Board while performing their du-

ties under this act, including the compensation and expenses of the secretary.

(2) The members of the Board of Accountancy shall each be paid as remuneration for the time actually expended upon the affairs of the Board an amount not exceeding Ten Dollars (\$10.00) per day, provided that all such expenses and remuneration must be paid from the receipts of the Board, and no expense incurred under this act shall be a charge against the funds of the State.

(3) The Board of Accountancy shall report annually to the Governor a full account of its proceedings, and shall include in such report a full and complete statement of all moneys received and disbursed by its secretary.

§ 8 The Board of Accountancy may revoke any certificate issued under the provisions of this act for unprofessional conduct or other sufficient cause, provided that written notice shall have been previously mailed to the holder of such certificate, twenty days before any hearing thereon, stating the cause for such contemplated action, and appointing a date for a full hearing thereof by the Board; and provided further, that no certificate shall be revoked until a hearing shall have been had. In the event of the revocation of a certificate, notification of such action shall be communicated to the Secretary of State, who shall thereupon remove the name of the holder of such certificate from the register herein provided for.

§ 9 If any person shall represent himself to the public as having received a certificate, as provided in this act, or shall assume to practice as a certified public accountant, or use the abbreviation, "C. P. A.," or any other words or letters to indicate that the person using the same is a certified public accountant, without having received such certificate, or after the same shall have been revoked, or without having complied with the provisions of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Hundred Dollars \$(200.00) for each offense; provided that nothing herein contained shall operate to prevent a certified public accountant, who is the lawful holder of

a certificate issued in compliance with the laws of another State, from practicing as such within this State, and styling himself a certified public accountant, provided he shall cause his certificate to be registered and shall pay the annual fee hereinbefore provided, unless such practice be temporary only, in which case he shall be allowed to practice upon the same terms and in the same manner as certified public accountants residing in this State now are, or hereafter may be, admitted to practice in such State.

C. P. A. Law

STATE OF PENNSYLVANIA.

"An Act to establish a board for the examination of accountants to provide for the granting of certificates to accountants, and to provide a punishment for the violation of this act.

"SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that any citizen of the United States residing or having an office for the regular transaction of business in the State of Pennsylvania, being over the age of twenty-one years, and of good moral character, and who shall have received from the Governor of the State of Pennsylvania a certificate of his qualification to practice as a public expert accountant as hereinafter provided, shall be designated and known as a certified public accountant, and no other person shall assume such title or use the abbreviation C. P. A., or any other words, letters, or figures to indicate that the person using the same is such certified public accountant. Every person holding such certificate and every copartnership of accountants, every member of which shall hold such certificates, may assume and use the title of certified public accountants, or the abbreviation thereof, C. P. A., provided that no other person or copartnership shall use such title or abbreviation or other words, letters, or figures to indicate that the person or copartnership using the same is such certified public accountant.

"SEC. 2. The Governor of the State of Pennsylvania shall appoint a board of five examiners for the examination of persons applying for certification under this act. Three of said examiners shall be public accountants, who

shall have been in practice as such for at least five years, one of whom shall be appointed for the term of one year, one for two years, and one for three years, and, upon the expiration of each of said terms, an examiner shall be appointed for the term of three years, and after one thousand eight hundred and ninety-nine these three examiners shall be certified public accountants. The other two examiners shall be practising attorneys in good standing in any of the courts in the State of Pennsylvania; one of them shall be appointed for the term of one year and the other for two years, and, upon the expiration of each of said terms, a successor shall be appointed for the term of two years. The examination of certificates shall be based upon an examination in commercial law and general accounting; said examination shall take place in Philadelphia, Harrisburg, and Pittsburg twice a year during the months of May and November of each year, under such rules and regulations as may be adopted by the board. The fees provided by this act shall be twenty-five dollars for each applicant, from which shall be paid for the expenses incident to such examination for stationery and clerk hire a sum not exceeding two hundred dollars, and if any surplus above said expenses shall remain at the end of any year it shall be paid after the traveling expenses of the board shall be deducted therefrom into the treasury of the Commonwealth. The results of such examinations shall be certified to the Governor and filed in the office of the Secretary of Internal Affairs and kept for reference and inspection for a period not less than five years, the Governor to issue the certificates.

"SEC. 3. The Governor of the State of Pennsylvania may revoke any such certificate for sufficient cause upon the recommendation of the Board of Examiners, who shall have given written notice to the holder thereof, and after he has had a hearing thereon.

"SEC. 4. The Board of Examiners may, in its discretion, waive the examination of any person who shall have been for three years before the passage of this act practicing in the State of Pennsylvania as a public accountant,

and who shall apply in writing for such certificate within one year after the passage of this act.

"SEC. 5. If any person shall hold himself out as having received the certificate provided for in this act, or shall assume to practice thereunder as a certified public accountant, or use the initials C. P. A. without having received such certificate, or after the same shall have been revoked, he shall be deemed guilty of misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars."

C. P. A. Law

STATE OF MARYLAND.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing or having a place for the regular transaction of business in the State of Maryland, being over the age of twenty-one years and of good moral character, and who shall have received from the Governor of the State of Maryland a certificate of his qualification to practice as a public expert accountant, as hereinafter provided, shall be styled and known as a certified public accountant; and no other person shall assume such title, or use the abbreviation "C. P. A.," or any other words, letters, or figures to indicate that the person using the same is such certified public accountant.

SEC. 2. The Governor shall, within sixty days after the passage of this act, appoint a board of four examiners for the examination of persons applying for certificates under this act; two of said examiners shall be public accountants, selected from a list of six names proposed by the Maryland Association of Public Accountants, one of which said two examiners shall hold office for the term of one year, and one for the term of two years, and upon the expiration of each of said terms, and of each succeeding term, an examiner shall be appointed for the term of two years, and after the year nineteen hundred each successor to said two examiners shall be appointed from such persons as may hold certificates as Certified Public Accountants under this act. The other two of said board of examiners shall be practicing attorneys, in good standing, in any of the courts of the State of Maryland; one of

them shall hold office for the term of one year, the other for the term of two years, and upon the expiration of each of said terms and each succeeding term a successor shall be appointed for the term of two years, such successors to be practicing attorneys, in good standing, as hereinbefore mentioned.

SEC. 3. Examinations of persons applying for certificates under this act shall be held at least once every year and be conducted according to such rules and regulations as the said board of examiners may adopt for the purpose. The results of such examinations shall be certified to the Governor, and to all persons as may have passed examination satisfactory to said board of examiners, and by it been recommended, the Governor shall issue the certificate mentioned in the first section of this act.

SEC. 4. The board of examiners shall charge for examination and certificate such fee as may be necessary to meet the actual expenses of such examination and issuing of such certificate, and shall report annually the receipts and expenses under the provisions of this act to the State Controller, and the surplus, if any, of receipts over expenses shall be paid into the State Treasury. The Governor may revoke any certificate issued under the provisions of this act for sufficient cause; provided written notice shall have been given to the holder thereof, and after he has had an opportunity for a hearing thereon.

SEC. 5. The board of examiners may in its discretion waive the examination of any person possessing the qualifications mentioned in Section 1 of this act, who shall have been at the time of the passage of this act practicing in this State as a public accountant on his own account, and who shall apply in writing to said board for such certificate within one year after the passage of this act, and upon the recommendation of said board the Governor shall issue said certificate to such person.

SEC. 6. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court having criminal jurisdiction shall be fined not less than fifty dol-

lars nor more than two hundred dollars, or be confined not more than six months in the county jail, if the conviction takes place in Baltimore City in the Baltimore City Jail, in the discretion of the court.

SEC. 7. *And be it enacted*, That this Act shall take effect from the date of its passage.

C. P. A. Law

STATE OF CALIFORNIA.

SECTION 1. Within thirty days after the passage of this act the governor shall appoint five persons, at least three of whom shall be competent and skilled public accountants, who shall have been in practice as such in this State for not less than five consecutive years, to constitute and serve as a State Board of Accountancy. The members of such board shall, within thirty days after their appointment, take and subscribe to the oath of office as prescribed by the Political Code, and file the same with the Secretary of State. They shall hold office for four years, and until their successors are appointed and qualified; save and except that one of the members of the board first to be appointed under this act shall hold office for one year, one for two years, one for three years and two for four years. Any vacancies that may occur, from any cause, shall be filled by the governor for the unexpired term; *provided*, that all appointments made after the first year must be made from the roll of certificates issued and on file in the office of the governor.

SEC. 2. The State Board of Accountancy shall have its office in the city and county of San Francisco, and its powers and duties shall be as follows:

1. To formulate rules for the government of the board and for the examination of and granting of certificates of qualification to persons applying therefor;

2. To hold written examinations of applicants for such certificates, at least semi-annually, at such places as circumstances and applications may warrant;

3. To grant certificates of qualification to such applicants as may, upon examination, be found qualified in

"theory of accounts," "practical accounting," "auditing" and "commercial law," to practice as certified public accountants;

4. To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates and conducting its office; *provided*, that all such expenses, including not exceeding five dollars per day for each member while attending the sessions of the board or conducting examinations, must be paid from the current receipts, and no portion thereof shall ever be paid from the State treasury;

5. To require the annual renewal of all such certificates, and to collect therefor a renewal fee of not exceeding one dollar.

6. To revoke for cause any such certificate, after written notice to the holder, and a hearing being had thereon; *provided*, that such revocation must receive the affirmative vote of at least four members of the board;

7. To report annually to the Governor, on or before the first day of December, all such certificates issued or renewed, together with a detailed statement of receipts and disbursements; *provided*, that any balance remaining in excess of the expenses incurred may be retained by the board and used in defraying the future expenses thereof.

8. The board may, in its discretion, under regulations provided by its rules, waive the examination of applicants possessing the qualifications mentioned in section three, who shall have been for more than three years prior to the passage of this act practicing in this State as public accountants on their own account, and who shall, in writing, apply for such certificates within one year thereafter.

SEC. 3. Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in this State, being over the age of twenty-one years and of good moral character, may apply to the State Board of Accountancy for examination under its rules, and for the issuance to him

of a certificate of qualification to practice as a certified public accountant, and upon the issuance and receipt of such certificate, and during the period of its existence, or of any renewal thereof, he shall be styled and known as a certified public accountant or expert of accounts, and no other person shall be permitted to assume and use such title or to use any words, letters or figures to indicate that the person using the same is a certified public accountant.

SEC. 4. Any violation of the provisions of this act shall be deemed a misdemeanor.

SEC. 5. This act shall take effect from and after its passage.

C. P. A. Law

STATE OF WASHINGTON.

AN ACT

To create a state board of accountancy, and prescribe its duties and powers; to provide for the examination of, and issuance of certificates to qualify applicants, with the designation of certified public accountant, and to provide the penalty for violations of the provisions thereof.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Within thirty days after this act shall take effect, the Washington association of public accountants shall nominate fifteen reputable and skilled accountants, who shall have been in practice as such not less than three consecutive years, from which the governor shall appoint five. The said five skilled accountants duly elected and appointed shall constitute the board of accountancy of the State of Washington, and shall hold office, as respectively designated in their appointments, for the term of one, two, three, four and five years, as hereinafter provided, and until their successors have been duly elected and appointed. The members of such board shall, within thirty days after their appointment, take and subscribe to the oath of office as prescribed by the statutes of the State of Washington, and file the same with the secretary of state. The certified public accountants of the State of Washington, as hereinafter provided, shall annually nominate five of their number, one of whom the governor of the State of Washington shall appoint to fill the vacancy annually occurring in said board, such appointment to be for the term of five years. In case of a vacancy occurring

from any cause, the governor shall fill the vacancy by appointing a certified public accountant from the names last submitted, to serve as a member of the board for the remainder of the term.

SEC. 2. The state board of accountancy shall have its office at such place in the State of Washington as shall be designated by the board, and its powers and duties shall be as follows:

(1) To formulate rules for the government of the board and for the examination of, and granting of certificates of qualification to persons applying therefor.

(2) To hold written examinations of applicants for such certificates, at least semi-annually, at such places as circumstances and applications may warrant.

(3) To grant certificates of qualification to such applicants as may, upon examination, be found qualified in theory of accounts, practical accounting, auditing, and commercial law, to practice as certified public accountants.

(4) To charge and collect from all applicants such fee, not exceeding twenty-five dollars, as may be necessary to meet the expenses of examination, issuance of certificates, and conducting its office: *Provided*, That all such expenses, including not exceeding five dollars per day for each member while attending the sessions of the board or conducting the examinations, must be paid from the current receipts; and no portion thereof shall ever be paid from the state treasury.

(5) To revoke for cause such certificates, after written notice to the holder, and a hearing being had thereon: *Provided*, That such revocation must receive the affirmative vote of at least four members of the board.

(6) To report annually to the governor, on or before the first day of January in each year, all such certificates issued during the preceding year, together with a detailed statement of receipts and disbursements: *Provided*, That any balance remaining in excess of the expenses incurred shall be transferred to the common school fund of the State.

(7) The board may, in its discretion, under regula-

tions provided by its rules, waive the examination of applicants possessing the qualifications mentioned in subsection three of this section, who shall have been for more than one year prior to the passage of this act, residents of the State of Washington, and who shall, in writing, apply for such certificate within one year thereafter.

(8) Every certified public accountant, during the time he continues the practice of his profession shall, annually, on such date as the board of accountancy may determine, pay to the secretary of said board of accountancy, a fee of one dollar, in return for which payment he shall receive a renewal certificate for one year.

SEC. 3. Any citizen of the United States, or any person who has duly declared his intention of becoming such citizen, residing and doing business in the State of Washington, being over the age of nineteen years and of good moral character, may apply to the state board of accountancy for examination under its rules, and for the issuance to him of a certificate of qualification to practice as a certified public accountant; and upon the issuance and receipt of such certificate, and during the period of its existence, he shall be styled and known as a certified public accountant, and no other person shall be permitted to assume and use such title, or to use any words, letters or figures to indicate that the person using the same is a certified public accountant, or expert of accounts.

SEC. 4. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine in any sum not exceeding one hundred dollars.

SEC. 5. This act shall take effect from and after its passage and approval by the governor.

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